

No. 16132

United States
Court of Appeals
for the Ninth Circuit

JAMES MOON, EDMOND M. WAGNER and
PHILIP SUBKOW, Appellants,

vs.

CABOT SHOPS, INC., and HOWARD SUPPLY
COMPANY, Appellees.

CABOT SHOPS, INC., and HOWARD SUPPLY
COMPANY, Appellants,

vs.

JAMES MOON, EDMOND M. WAGNER and
PHILIP SUBKOW, Appellees.

Transcript of Record

In Three Volumes

VOLUME II.

(Pages 321 to 636, inclusive)

Appeals from the United States District Court for the
Southern District of California,
Central Division

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(Testimony of Cleon James Moon.)

Mr. Kenway: But you are not stating definitely, as I understand it, that there could only have been a failure of the hydraulic system that caused the accident?

The Witness: There are many things which cause accidents in machines of this type.

The Court: Any further questions of Mr. Moon?

Mr. Subkow: Yes.

Q. In your examination with respect to Exhibit 33, [216] you were asked whether you considered that the positioning of the erecting mechanism inside the cab was a necessary part of your invention. Did you believe at the time that you——

The Court: There we are again. We are wasting more time by people trying to repeat what somebody said. That is what starts most of the arguments.

Mr. Kenway is on his feet to say he didn't ask him that. Aren't you?

Mr. Kenway: I don't recall saying that it was a necessary part.

The Court: It went to the question of whether it was desirable. Wasn't it?

Mr. Kenway: Yes.

Mr. Subkow: Then I misunderstood, and I withdraw the question. Then my notes are in error.

The Court: Are you ready to release Mr. Moon from the stand now?

Mr. Subkow: May I look at my notes, your Honor?

The Court: Yes.

(Testimony of Cleon James Moon.)

Q. (By Mr. Subkow): On the patent 2,331,558, the McEwen patent, do structures of that kind when erected have their guy extending from the top of the derrick connected to the gooseneck, or any part of the vehicle?

A. Generally not. It is conceivable that they could. [217] I would have to be completely honest about that. I believe I have seen some of the light type that had it secured to the gooseneck.

Q. You stated that certain back-in type units can be made legal. Can you state what kind of back-in type units can be built to be legal?

A. Yes. The McEwen type shown in this patent 2,331,558 can be made legal.

Q. With regard to Exhibit 29, I will ask one more question. The McEwen type is described as what kind of a unit?

A. It is a semi-trailer unit, and is an exceptionally difficult unit to handle, as anyone who has ever backed up a trailer knows. It also has the disadvantage of having a separate tractor and a separate engine in the equipment.

The engine 4 in the McEwen patent is the hoist engine. There is also an engine in 1, the truck-tractor vehicle. That means that you have a duplication of engines, one for running the hoist, and one for transportation purposes.

In the case of the semi-trailer design, you can make the unit legal, because we can take advantage of the extended wheelbase, and the law, which says that any combination of vehicles can reach out to

(Testimony of Cleon James Moon.)

60 feet. However, with wheelbases of that length, and the fact that it is a semi-trailer unit, [218] makes it extremely difficult to back into a well.

Q. With regard to Exhibit 29, that is the exhibit— A. Maybe I can find it here.

Q. —the Waldrip sliding type derrick unit, showing the erecting position? A. Yes.

Q. Had you moved the derrick only part way, that is, between the position shown in the exhibit and the position where it is usually when it is transported, would it have been possible at that position to fulcrum the derrick off the end of the truck? A. No, it would not.

Q. What would have interfered?

A. It was not secured at the fulcrum point when it was part way. We had only two latching points, one at the lower end of the mast, and one near the first girt, the first station point.

Q. And the security of the structure depended upon the proper functioning of those latches; is that correct?

A. Yes, that's right, and we had a near accident in bringing this design out. All of the units that had this type of design have all been changed over to the fixed type.

Mr. Subkow: That is all of my redirect.

The Court: Anything further of Mr. Moon?

Mr. Kenway: May I ask Mr. Subkow a question? You [219] remember Exhibit 96?

Mr. Subkow: Yes, sir.

(Testimony of Cleon James Moon.)

Mr. Kenway: Have you any other photographs of that?

Mr. Subkow: Yes, we have, and we will provide a series of photographs for you tonight on my way home. I have them up in my office. I am getting four copies of each of these.

We were going to use this particular photograph in connection with the examination on rebuttal. I have other photographs, and I will make them available to you.

Mr. Kenway: Does that show the front end,—some of the others?

Mr. Subkow: Yes, they show the front and they show other features. We will give you the whole group, and we may use them depending on the course of the trial. I don't know what is coming, you know.

The Court: You may step down, Mr. Moon.

(Witness excused.)

The Court: Anything further from the plaintiffs on the issue of validity?

Mr. Subkow: Yes, your Honor. We had organized the trial to start putting in the evidence of infringement at this point, and we were going to use the deposition of Mr. Woody, and some exhibits in connection with it. In view of the instructions that we would sever the issues, [220] last night I went through it, and I have some portions of the deposition of Mr. Woody which I would like to read into the record. It is only a small portion, and I know your Honor is impatient with that sort of thing,

but if I could have your indulgence, I would like to have your Honor hear that portion.

The Court: How much longer will it take to put on your entire case?

Mr. Subkow: Including infringement?

The Court: Yes.

Mr. Subkow: I had thought we could do it in about three days.

The Court: Three days for the plaintiff?

Mr. Subkow: Including the time I have spent. It might be another day.

The Court: This entire trial you gentlemen estimated would take four days, in its entirety.

Mr. Subkow: Six days, your Honor.

The Court: Then I must have written it down wrong. I don't know why it should take so long. I would say that you just make me sick of these devices when you keep on and on, and if I haven't learned it by now, I am hopeless. You will never get me to understand it if I don't understand it by now.

Mr. Subkow: I think you understand it. [221]

Well, all we can do is we can shorten it if we introduce the deposition as an exhibit, and rely on that. That would cut it. But then when we come to our witness to compare the structure, I wouldn't know whether your Honor would have that information before you.

The Court: Compare what structure?

Mr. Subkow: The infringing structure.

The Court: Can't we compare them? Is this so complicated that we have to have somebody sit

Mr. Subkow: On the issues of validity, it should not take very long.

The Court: Why can't you read into the record those portions that you wish to offer on the issue of validity, and then just offer the deposition as far as the issue of infringement is concerned, and then argue the matter?

Mr. Subkow: Yes.

The Court: Or probably you can argue from all of it.

Mr. Subkow: Yes, I am perfectly prepared to do so. I will introduce the whole thing as an exhibit, and argue from that. Yes, I am prepared to do that.

The Court: How long will it take the defendants, in the light of what we have said? [224]

Mr. Kenway: Well, allowing for reasonable cross examination, I would think I could be through in just about a day. Perhaps that is a little short. Perhaps it might go over a little.

Mr. Subkow: Your Honor, my statement assumes that I will be permitted on rebuttal to put my expert on to compare the structure.

The Court: Yes, if you feel you need him.

Mr. Subkow: Yes. [225]

The Court: But let's not use him until we need him, if that's agreeable.

Mr. Subkow: Yes. Let's wait to see.

The Court: Very well. We will resume then tomorrow morning at 9:30, if that is agreeable. The defendant will plead its evidence—

Mr. Subkow: May I ask the indulgence of the

court to make it 10:00 o'clock tomorrow? And I will be prepared to go another half hour in the evening. There are some matters that I want to take care of in the morning.

The Court: Very well. 10:00 o'clock.

If we don't conclude this—I have two other cases waiting, as you know, coming here tomorrow, and if we don't conclude this case by Friday evening, I don't know when we can take it up again. It might be a month or six weeks.

Mr. Subkow: Your Honor, we are in your hands there.

The Court: Well, let's boil it down into terms of finishing by early Friday afternoon.

Mr. Kenway: Do I understand that the plaintiff has rested its case?

The Court: He anticipates he will rest tomorrow noon on his entire case, as I understand it. Is that correct?

Mr. Subkow: Yes, I believe it is.

The Court: Very well. The trial will be recess until tomorrow morning at 10:00 o'clock. [226]

The court will adjourn.

(Whereupon, at 4:30 o'clock p.m. a recess was taken until 10:00 o'clock a.m. of the following day, Thursday, March 27, 1958.) [227]

Thursday, March 27, 1958. 10:00 a.m.

Mr. Kenway: Mr. Subkow has very kindly permitted me to put on a short witness, interrupting his presentation.

The Court: You may.

Mr. Kenway: Mr. Hopper, will you take the stand, please?

Mr. Subkow: May I be given a moment, your Honor?

The Court: Yes.

Mr. Lyon has handed me a list of defendants' exhibits. Do you wish to file a copy for the—does the clerk have a copy?

Mr. Clerk: I don't have one, sir.

The Court: Well, I tell you, we might bring these lists of exhibits up to date, and then at the close of the evidence each side file a copy with the clerk, and we will receive them as exhibits.

Mr. Subkow: That was my suggestion.

The Court: In that way we will have a complete list of all exhibits going into the record in case there is an appeal.

Mr. Subkow: In the presentation of the rest of my case may I then refer to these exhibits and give them a number with the understanding that the completed list will be the one that is referred to?

The Court: Yes.

Mr. Subkow: We have corrections to the record yesterday. [231] May we proceed as we did yesterday?

The Court: Yes, you may.

Are you ready to call your witness, Mr. Kenway?

Mr. Kenway: Yes, your Honor.

Would you please hand the witness Exhibit No. 47, the Hopper catalog?

The Court: The witness has not yet been sworn, has he?

Mr. Kenway: That's right, sir.

The Court: Will you swear the witness? [232]

FRANK A. HOPPER, JR.

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your full name, please?

The Witness: Frank Hopper, Jr.

The Clerk: Frank Hopper, Jr.?

The Witness: Frank A. Hopper, Jr.

The Clerk: Thank you, sir.

Direct Examination

Q. (By Mr. Kenway): Mr. Hopper, you are appearing here under subpoena, are you?

A. Yes.

Q. What is your occupation?

A. I am manager of shop operations for the Hopper Machine Works, Incorporated.

Q. And does that company manufacture the equipment shown in the catalog, Exhibit 47?

A. Yes.

Q. And the company is a licensee under the patent in suit, is it not? A. Yes.

Q. I would like to ask you about the problem of legality of the well serving and drilling rigs, and ask [233] whether in the light of your experience you have greater problems with drive-in equipment or with back-in equipment?

(Testimony of Frank A. Hopper, Jr.)

A. No, I would say in general the problems are very similar.

Q. Would you say that the problem of legality of this type of equipment is one which has been satisfactorily solved?

A. No, that problem will be with us forever, as near as I can tell.

Q. Now, with respect to the height of the equipment above the road, do you have a greater problem when it comes to making a back-in unit or a drive-in unit?

A. No, the problems are identical, because in most cases the derrick configuration is similar on both types of construction.

Q. When it comes to the capacity of a drive-in or back-in unit to carry additional equipment, is one able to carry more additional weight than another?

A. Well, I am afraid that you would have to qualify that question slightly in this sense. The best way to answer it, I believe, is that the maximum gross which you can put on the highway is basically a functional wheelbase and the more a wheelbase you have to work with, the more weight you can put on the road legally, and, obviously, you have more wheelbase with a semi-trailer piece of equipment, [234] or, as you have termed it, the back-in type equipment.

Q. That is the back-in type?

A. Back-in, yes.

Mr. Kenway: All right. Your witness, Mr. Subkow.

(Testimony of Frank A. Hopper, Jr.)

Cross Examination

Q. (By Mr. Subkow): You referred in your last answer to a semi-trailer type of equipment. Is that shown in your catalog, Mr. Hopper?

A. Yes, I believe so.

Q. Will you tell us where it is to be found?

A. Here is one on page 2369, Figure 23.

Q. In making your answers to Mr. Kenway's questions with regard to the back-in unit, were you referring to this type of unit in your answers?

A. That is correct.

Mr. Subkow: That is all, your Honor.

The Court: Any further of Mr. Hopper?

Mr. Kenway: No, thank you.

The Court: You may step down.

Mr. Kenway: Will the court excuse this witness? He is under subpoena, and wants to go elsewhere.

The Court: He is excused.

Mr. Kenway: Thank you. [235]

(Witness excused.)

Mr. Subkow: I will try standing here for a little while, your Honor.

In view of your Honor's ruling on the order of proof, we have condensed or collapsed our case on the question of infringement, and will introduce the evidence, reserving for rebuttal other direct proof we may need to establish the issue of infringement.

At this point we will offer in evidence the pretrial conference order as Exhibit 101.

The Court: Received in evidence.

(The document referred to was marked Plaintiffs' Exhibit 101, and received in evidence.)

[See pages 57-73.]

Mr. Subkow: It is understood that that offer includes such portions of the plaintiffs' pretrial statement of facts as is referred to in the pretrial conference order?

The Court: Yes.

Mr. Subkow: We would like to introduce some answers to interrogatories by reference to the interrogatories, without reading them into the record, if that would be permitted.

The Court: It will be permitted unless there is any objection.

Mr. Kenway: No objection.

Mr. Subkow: In that case, there will have to be some clarification of some of the references in the answers, and I [236] will ask for stipulations with regard to these matters.

The Court: Have those interrogatories and the answers been marked as an exhibit?

Mr. Subkow: No, all of these interrogatories have been introduced into evidence by reading them into the record.

The Court: But now you wish to offer them without reading?

Mr. Subkow: Only specific answers to specific interrogatories, and not all the interrogatories.

The Court: Without reading?

Mr. Subkow: Well, I was trying to save time by doing it that way.

The Court: It is very desirable——

Mr. Subkow: Well, perhaps I had better read them.

The Court: Ordinarily I mark answers to interrogatories and responses to admissions as exhibits, so they will not be lost sight of in making up the record on appeal.

Mr. Subkow: I understand that, your Honor, but I am faced with the fact that some of these interrogatories contain self-serving statements, and I am afraid that if I offer them they might be binding on me as statements, and I am trying to avoid that consequence. I don't know what your ruling on that point would be, but I am just trying to preserve the procedural character of my presentation.

The Court: I would not hold them binding upon you. [237]

Mr. Subkow: Very well.

The Court: I don't know what the Court of Appeals might do.

Mr. Subkow: That was it.

The Court: Where something appears that is contrary to the truth, I do not find courts are disposed, just because some witness said something adverse to the person who called them, to follow that old rule any more.

Mr. Subkow: That seems to be the rule in Massachusetts. Perhaps Mr. Kenway can clear it up for us.

Mr. Kenway: In the interests of saving time, I am willing to state that we will not claim that our

answers to the interrogatories do bind the plaintiffs.

Mr. Subkow: But do bind the defendants?

Mr. Kenway: Well, I think that goes without saying.

Mr. Subkow: Then I will just offer the answers to the interrogatories in toto.

The Court: How many documents are there?

Mr. Subkow: There are two answers; one filed on February 21st, and one filed on March 20th, I believe.

The Court: The answers contain, of course, the interrogatories, under our rules, counsel?

Mr. Subkow: Yes, they do. There are also some answers, or, there is also a stipulation by the parties with regard to the adoption of the answers of the defendant Cabot Shops, [238] Inc.

Mr. Lyon: You mean by Howard?

Mr. Subkow: The adoption by Howard of the answers. That stipulation was dated when?

Mr. Lyon: March 12th. [239]

Mr. Subkow: And I would like to offer that stipulation, as well as the answers to the interrogatories.

The Court: March 12th?

Mr. Lyon: It was handed up just the other day.

There is also the answers of Howard Supply to certain interrogatories.

The Court: Filed March 31st.

Mr. Lyon: Right.

The Court: Now, the defendant Cabot Shops' answer is filed February 21st? Is that the one?

Mr. Subkow: Wait a minute. I am not offering

those answers. Are you offering the answers of Howard?

Mr. Lyon: The judge is asking you about defendant Cabot Shops' answers filed March 21st.

The Court: February 21st.

Mr. Lyon: March 21st, if your Honor pleases.

The Court: I am speaking about the earlier ones. It just so happens that the earlier answers were filed February 21st.

Mr. Lyon: I think Mr. Subkow is offering them both.

The Court: I am taking them one at a time, gentlemen.

Mr. Subkow: May I make my offer myself, your Honor?

The Court: Yes. But you have already made your offer as I understood it.

Mr. Subkow: That's right. [240]

The Court: The first offer is the answers filed February 21st.

Mr. Subkow: That's right.

The Court: That will be Exhibit No. 102 in evidence.

(The exhibit referred to, marked Plaintiffs' Exhibit 102, was received in evidence.) [241]

[See pages 11-27.]

* * * * *

The Court: The next offer is of the answers of the Cabot Shops, the defendants' further answers, being answers of defendant Cabot Shops filed March 21st. That will be received in evidence as Exhibit No. 103.

(The Exhibit referred to, marked Plaintiffs' Exhibit 103, was received in evidence.) [242]

[See pages 80-86.]

. The Court: Then there is a stipulation, you say, with respect to the answers of defendant Howard Supply Company. Is that correct?

I don't see it in my file.

Mr. Subkow: It's the stipulation I signed here the other day. I don't know where March 12th comes from.

Oh, it bears the date of March 12th. I see.

The Court: Mr. Clerk, do you have it?

Mr. Lyon: I handed it to your Honor yesterday just after the noon recess.

The Court: The clerk probably has it.

The Clerk: I have the original.

The Court: Where is the extra copy?

The Clerk: I believe I sent it into your office.

The Court: When was it filed?

Mr. Lyon: Yesterday, sir.

The Court: Filed March—

The Clerk: Yesterday was March 26th.

The Court: —March 26th.

It will be received as Exhibit No. 104.

(The exhibit referred to, marked Plaintiffs Exhibit 104, was received in evidence.) [242-H]

[See pages 86-87.]

The Court: Is there an order made on the stipulation?

Mr. Lyon: We handed it up. I don't know whether your Honor signed it or not.

The Clerk: It was signed.

The Court: Very well. The stipulation and the order.

Now, do you wish to offer the answer of defendant Howard Supply Company filed March 21, 1958?

Mr. Subkow: No, I do not.

The Court: Very well. That's what you had in mind.

Mr. Lyon: If the court please, if you file this stipulation, as you have already ordered it received the stipulation states that the Howard Supply Company adopts as its answers to interrogatories, which it hasn't answered in that other paper, and the stipulation is unintelligible unless the answers that it hasn't filed—

The Court: Well, you can offer them.

Mr. Lyon: Well, at this time then I will offer the answers of Howard Supply.

Mr. Subkow: I will object that they were self-serving statements and not admissible.

The Court: Well, how is your record intelligible then?

Mr. Subkow: Because the answers of the Cabot Shops are in the record.

I am perfectly willing that they go in for purposes of identification but I am not offering them at all. [242-J]

The Court: Very well. Let them be received for that limited purpose.

Mr. Lyon: Thank you, your Honor.

The Court: Answers of defendant Howard Supply Company filed March 21, 1958 will be received as Plaintiffs' Exhibit No. 105 for the purposes of

identifying the answers referred to in Exhibit No. 104.

(The exhibit referred to, marked Plaintiffs' Exhibit 105, was received in evidence.) [242-K]
[See pages 75-79.]

Mr. Subkow: There are certain statements in the pretrial conference order in which there appear references to earlier portions which become unintelligible without them, and I am asking for stipulations to identify them.

In the pretrial statement of fact 50-B, which is admitted in the pretrial conference order, there is a reference to a brochure. [243]

May I have a stipulation that that brochure is Exhibit No. 22 in evidence?

Mr. Kenway: No. That is Exhibit H.

Mr. Subkow: It is also Exhibit No. 22.

Mr. Kenway: It was withdrawn as No. 22.

The Court: The defendants offered it as Defendants' H, with your permission.

Mr. Subkow: I am getting forgetful, your Honor.

The Court: Well, there are quite a few documents to remember here.

Mr. Subkow: Well, let's mark it H as long as it is identified.

The Court: It is received in evidence as H, is it not, Mr. Clerk?

The Clerk: That is correct. And No. 22 was withdrawn.

The Court: The Waldrip brochure. I marked it on your exhibit list as Exhibit H.

Mr. Subkow: I am sorry. I forgot.

In the answer to Interrogatory No. 14, served February 21, 1958, may we have the stipulation that Exhibit H therein referred to is the same Exhibit H?

Mr. Kenway: Agreed.

Mr. Subkow: The answer to Interrogatory No. 13, served March 20, 1958, in the last sentence may it be stipulated that Mr. Cory at the time referred to was the salesmanager [244] of the Frank's Manufacturing Corporation?

Mr. Kenway: On what date?

Mr. Subkow: The date referred to in the answer to the interrogatories. The answer to Interrogatory 13 served on March 30, 1958.

The Court: Can you give us the date referred to?

Mr. Subkow: No date is referred to, your Honor.

Mr. Lyon: 1951 is referred to.

Mr. Subkow: A period of time.

Mr. Kenway: He was in 1951. He no longer is, as I understand it. As of the middle of September last year, 1957.

Mr. Subkow: He was the salesmanager during all that period.

The Court: What is your stipulation, gentlemen? That he was during the time in question the salesmanager and continued to be salesmanager until the year 1957? Is that your stipulation?

Mr. Kenway: That is agreeable.

Mr. Subkow: In the answer to the Interrogatory No. 15 served February 21, 1958, and also the answer to the same interrogatory served March 20,

1958, may it be stipulated that the Waldrip wildcat there referred to is Exhibit 41?

Mr. Kenway: Yes, that is correct.

Mr. Subkow: The Woody deposition is a bound volume [245] containing two depositions bound together in one volume. The first deposition is one given on notice by the plaintiffs and contains pages 1 to 185.

We offer that deposition as Exhibit No. 98.

The Court: Any objection?

Mr. Kenway: No objection.

The Court: Received in evidence.

(The exhibit referred to, marked Plaintiffs' Exhibit No. 98, was received in evidence.)

[See page 511.]

Mr. Subkow: We have two lists of exhibits, our exhibit list and a list of the Woody deposition correlated to the trial exhibits.

I would like to offer the exhibit list as Exhibit No. 99, subject to a completion and correction according to your Honor's suggestion.

The Court: It will be received in evidence as Exhibit 99.

(The exhibit referred to, marked Plaintiffs' Exhibit 99, was received in evidence.)

The Court: That is the list two pages headed "Woody Deposition Exhibits" in one column and "Trial Exhibits" in another?

Mr. Subkow: I was referring to our trial exhibit list, the large one.

The Court: The trial exhibit list itself will [246] be Exhibit No. 99.

Mr. Subkow: Now, that is offered without offering the captions of the exhibit as having any particular meaning.

The Court: Only for the purpose of identification.

Mr. Subkow: Yes, your Honor.

And I will now offer the Woody exhibit list as Exhibit No. 100. The one that is—there is one column "Woody"—

The Court: Received in evidence.

(The exhibit referred to, marked Plaintiffs' Exhibit 100, was received in evidence.)

Mr. Kenway: I beg your pardon. Did you say Exhibit No. 100? We already have an exhibit 100. That is the pretrial—no, that was 101. I beg your pardon, your Honor.

Mr. Subkow: Now, I would like to make a bulk offer of all of the Woody exhibits listed in the Woody exhibit list, Exhibit No. 100, without separate identification and—

The Court: Are they attached? Have you offered the deposition?

Mr. Subkow: Yes, sir.

The Court: Of which they are a part?

Mr. Subkow: Yes.

The Court: What exhibit number is that?

Mr. Subkow: That was Exhibit No. 98.

The Court: Exhibit No. 98. And these Woody deposition exhibits now offered as exhibits to the deposition, [247] Exhibit No. 98, are they?

Mr. Subkow: Yes, sir.

The Court: Any objection to the offer?

Mr. Kenway: No, your Honor.

The Court: Very well. They will be received in evidence and will be identified in this record as sub-exhibits of Exhibit 98.

Mr. Subkow: And they are all identified in No. 98.

The Court: Yes. They will bear the same identification in this record as they bear in Exhibit 98, being sub-numbers of Exhibit 98.

Mr. Subkow: They are all given numbers in 98, and you will find each exhibit on one list identified in the other list.

For example, if you will take Exhibit 1 of the Woody list and turn to Exhibit 54 of the main list, Exhibit 99, you will find that it is identified as the 1956 Cabot catalog.

The Court: Well, do you wish the Woody deposition exhibits to be given trial exhibits here and appear independent of the deposition?

Mr. Subkow: Yes, sir. And that is the way that we have organized this exhibit and, therefore, there will be no confusion.

The Court: Then they will be given the [248] numbers 54 to 91, inclusive, as appears on Exhibit 100?

Mr. Subkow: Your Honor, they are not sequential. They have the corresponding numbers given. For example, you will see—

The Court: I just assumed it was sequential.

In other words, you will give them the trial exhibits as they appear under the trial exhibit column in Exhibit 100.

Mr. Subkow: That's' right. That simplifies it.

The Court: Do you have it, Mr. Clerk?

The Clerk: I have it.

The Court: Do you understand it?

The Clerk: Yes, I do.

The Court: Very well.

Mr. Subkow: It's sort of a concordance, you see.

The Court: Yes. It will be very helpful.

Mr. Subkow: Otherwise it would be utter confusion, because the exhibits are otherwise identified in the deposition itself. [249]

(The exhibits referred to, marked Plaintiffs' Exhibits 54, 55, 56, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 78, 79, 80, 81, 82, 83, 84, 85, 41, 10, 86, 11, 87, 88, 12, 14, 15, 89, 90 and 91, were received in evidence.)

[See Exhibits 10, 11, 12, 84 and 91 in Book of Exhibits.]

Mr. Subkow: Now, we have some additional exhibits we would like to introduce in evidence. We have a photograph which I have given to the defendants yesterday—

The Court: Before you go ahead, what is Exhibit 99?

Mr. Subkow: Exhibit 99 is the exhibit list itself.

The Court: Thank you.

And Exhibit 97?

Mr. Subkow: Exhibit 97 I am now offering.

The Court: Well, it's a small wonder I couldn't find it.

Mr. Subkow: I am referring this as a photograph of a detail showing the point at the juncture of the

rear leg of a Franks clipper unit and the outrigger.

May it be received in evidence without further foundation?

The Court: The photograph is received as Exhibit No. 97.

I understand it is stipulated that it fairly depicts what Mr. Subkow so stated it did.

Mr. Kenway: Yes, sir.

(The exhibit referred to marked Plaintiffs' Exhibit 97, was received in evidence.)

[See Book of Exhibits.]

Mr. Subkow: May I have Exhibits 40, 42, 43, 44, 45 and 46?

I believe they are—42 is the Waldrip 1948 catalog. [250] 43 is the 1949 catalog, which the clerk should have. Have you got it?

That is Exhibit 43. Does the clerk have copies of them? [251]

Mr. Subkow: Yes. Have you got Exhibit 42? I will give it to you, and you may be able to find it later.

Have you Exhibit 41?

The Clerk: Not right here in this group.

Mr. Subkow: I will give you an extra copy of it.

I will offer these Exhibits 40, 41, 42, and 43 in evidence, as they are identified in the exhibit list 99.

May they be received without further foundation as being a fair representation of what they state?

Mr. Kenway: Yes.

The Court: Let me get that offer again. Which exhibits?

Mr. Subkow: 40, 41, 42 and 43.

The Court: Received in evidence.

(The documents referred to were marked Plaintiffs' Exhibits 40, 41, 42 and 43, and received in evidence.)

Mr. Subkow: May I also have a stipulation that the Exhibit 41, the Waldrip Wildcatter is the Waldrip Wildcatter referred to in the Woody deposition as Exhibit—

The Court: On your exhibit list it is listed in the column as Woody Former Deposition Exhibit 35?

Mr. Subkow: That answers my problem.

The Court: Yes, or Moon deposition 9?

Mr. Subkow: That is right.

The Court: Is it stipulated that is one and the same [252] items?

Mr. Kenway: Yes.

The Court: The Waldrip Wildcatter?

Mr. Kenway: Yes, sir.

Mr. Subkow: Now, I next offer Exhibits 44, 45 and 46, being the certified copies of the Moon patent 2,662,797, 2,565,777, and the Moon application serial No. 10412.

The Court: Any objection?

Mr. Kenway: No, your Honor.

The Court: Received in evidence.

(The documents referred to were marked Plaintiffs' Exhibits 44, 45 and 46, and received in evidence.)

[See Exhibits 44 and 45 in Book of Exhibits.]

Mr. Subkow: That was 44, 45 and 46.

The Court: Yes.

Mr. Subkow: Now, in the Woody exhibit list there are some very large drawings, and in order to make it possible to study them with some comfort, we had them reduced in size by photographs. We have them on our list as Exhibit 57, which is a reduction of the Franks' Exhibit 56; Exhibit 59, which is a reduction of Exhibit 58; Exhibit 75, which is a reduction of Exhibit 74, and Exhibit 77, which is a reduction of Exhibit 76.

The Court: The exhibits themselves of which those are reproductions have already been received?

Mr. Subkow: Yes, sir. [253]

The Court: Any objection to the reproductions?

Mr. Kenway: No objection, subject to correction if errors are found.

Mr. Subkow: Of course.

The Court: Exhibits 57, 59, 75 and 77 are now received in evidence.

(The documents referred to were marked Plaintiffs' Exhibits 57, 59, 75 and 77, and received in evidence.)

[See Exhibit 59 in Book of Exhibits.]

Mr. Subkow: Your Honor, I apologize, but you did say 57 and 59?

The Court: 57, 59, 75 and 77 are the reductions?

Mr. Subkow: Thank you, yes, sir.

With respect to Exhibit 92—let's have Exhibit 92.

I would like to offer in evidence Exhibit 92. It bears at the bottom a statement, "Oil and Gas Journal, July 29, 1957," which was placed on this, I believe, by Mr. Moon.

Mr. Lyon: May we see it, please?

(The document was handed to counsel.)

Mr. Subkow: We have an extra copy for you.

Mr. Kenway: No objection.

The Court: Any objection to Exhibit 92?

Mr. Kenway: No objection, your Honor.

The Court: Received in evidence. [254]

(The document referred to was marked Plaintiffs' Exhibit 92, and received in evidence.)

The Court: Has Exhibit 93 been received yet, that large drawing?

Mr. Subkow: No, it has not been received. Exhibits 94 and 95 were offered for the limited purpose, and I would like now to make a general offer of these Exhibits 94 and 95.

The Court: For all purposes?

Mr. Subkow: For all purposes.

Mr. Kenway: That is Exhibits 94 and 95?

Mr. Subkow: Yes.

Mr. Kenway: We object, if they are offered as illustrating the units actually constructed by the defendants. We have no objection to them to explain the testimony that Mr. Moon gave about loads, and so forth, in other words, as demonstrating what they are as to the derricks themselves.

Mr. Subkow: Your Honor, that has been the difficulty in not being able to present the evidence.

The Court: Well, how do you expect to lay the foundation on the issue of infringement?

Mr. Subkow: That was my problem. That is why I wanted to put it in full, but your Honor suggested

I merely present the evidence and meet that on rebuttal, and that is the way I am proceeding.

The Court: There is no foundation to show that it [255] depicts the accused device, is there?

Mr. Subkow: Of course not.

The Court: ——except for the mast itself?

Mr. Subkow: Of course not.

The Court: Now, do you have a witness that you wish to swear and have him say so?

Mr. Subkow: Yes.

The Court: That will not take but a minute, and then you will meet the objection.

Mr. Subkow: I wanted to support it by the supporting evidence which would now come forward.

The Court: If they deny it, you could meet it on rebuttal.

Mr. Subkow: May we ask whether the denial, or, to what feature the objection extends, and maybe on the rebuttal we could address ourselves to that point, and that would be satisfactory.

The Court: Wherein is the accused device not fairly depicted on Exhibits 94 and 95?

Mr. Kenway: If I may say, your Honor,—

The Court: Yes.

Mr. Kenway: There is shown here—

The Court: You are referring now to Exhibit—

Mr. Kenway: Exhibit 95. There are two things. It shows the cab extending forwardly into the area circumscribed [256] by the wedge of the derrick.

Mr. Subkow: Is that this small angular section right here that you are referring to (indicating)?

Mr. Kenway: Yes.

The Court: Can it be stipulated that on the defendants' device the front end of the cab does not protrude under any portion of the mast when erected?

Mr. Subkow: I believe the evidence in the Woody deposition—

The Court: Is that the problem?

Mr. Kenway: That is the problem.

Mr. Subkow: I think the evidence in the Woody deposition shows that it does to that extent.

Mr. Kenway: We claim that it does not.

The Court: Is that going to be material?

Mr. Subkow: I don't think it will be too material. I don't think it is material whether a little tip of a thing sticks in there or not.

The Court: Then why don't you stipulate that it does not protrude that far?

Mr. Subkow: I will be willing to.

The Court: I can't conceive that that will be a determinative factor in any infringement.

Mr. Subkow: It certainly would be a de minimis matter, if anything. [257]

Mr. Kenway: I am sorry I can't agree with that, your Honor. This is a case of file wrapper estoppel. I don't want to argue something that is out of place, and I will state our purpose, if it would be helpful at this time.

The Court: Of course, I don't want to lead either side into a stipulation, and I would relieve you of it if it did later become material.

Mr. Kenway: It seems to be a most peculiar

thing to quibble about, but, frankly, I think the claims—

The Court: Then the only time it could be material, I take it, is if it protruded far enough that the person sitting in the driver's position, or sitting in the cab, at least, could look up inside of the mast.

Mr. Subkow: Assuming there was some transparency through which you could look.

Mr. Kenway: If Mr. Subkow would accept that as a statement—

Mr. Subkow: Let us do this—

The Court: Won't you stipulate it does not protrude far enough into the mast to enable the driver to look up inside the mast?

Mr. Subkow: I don't know. I would have to ask. I would say this: Let it go in subject to proof on that point, and we will solve the problem of whether it sticks a quarter of an inch into the thing, and whether it is [258] significant, later on.

The Court: As now drawn, it would be my feeling, unless I was convinced to the contrary, and I should say that you could not see at all up there. That is the way it looks to me, unless you could see through some windows up in the top of the cab.

Mr. Subkow: That is right. May I ask my people about that?

The Court: Yes. [259]

Mr. Subkow: My advisor tells me you can't see through solid steel.

The Court: That's a sound observation.

Does that mean you stipulate?

Mr. Subkow: Yes.

The Court: Is there any objection—oh, you have another item.

Mr. Kenway: Just one more thing, and I don't think that there will be any difficulty here.

Mr. Subkow: Just a second. I am further advised.

If your Honor will turn to Exhibit No. 55 and to page 1810—

Mr. Kenway: That is our equipment. There is no question about that.

Mr. Subkow: The exhibit was prepared with that in mind. I think that you will find that the cab extends at least as far as we have depicted it and that the exhibit is a fair representation.

The Court: Well, even here—

Mr. Subkow: You can't see up here.

The Court: —the cab wouldn't extend into the mast itself.

Mr. Subkow: No, exactly. The question is whether we made a fair representation of it on that exhibit and whether the exhibit may be admitted in evidence as being fair [260] representation.

The Court: Well, is it intended that the front end of the cab merely abuts—

Mr. Subkow: Just as it is shown there, your Honor.

Mr. Kenway: You are not relying on this drawing to show infringement, are you?

Mr. Subkow: Oh, no.

Mr. Kenway: What difference does it make?

The Court: Well, we are certainly wasting a great deal of time.

Mr. Kenway: Why offer it as showing our equipment?

Mr. Subkow: Because it is a piece of demonstrative evidence that might help his Honor consider the case. I don't know. We thought it did when we prepared it.

The Court: What went in yesterday, yes, with respect to the analysis of the forces involved with respect to the mast, and the truck itself.

Mr. Kenway: I thought so, too. And I have no objection to that exhibit on that basis.

The Court: Is it offered for any other purpose than to show—

Mr. Subkow: Yes. It is offered to show the relationship of the parts.

Here is another point which we will offer. There are two points illustrated in the Woody [261] deposition—

The Court: Well, why don't you put someone on the stand who says that they have examined the defendants' equipment and they correctly show it. And then I will receive it, and the defendant can meet it.

Mr. Subkow: I ask Mr. Wagner to take the stand.

EDMOND M. WAGNER

called as a witness on behalf of the plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: What is your full name, please?

The Witness: Edmond M. Wagner.

The Clerk: Edmond?

The Witness: E-d-m-o-n-d, M. W-a-g-n-e-r.

Direct Examination

Q. (By Mr. Subkow): I show you Exhibits 94 and 95, and an exhibit which has not yet been marked, and which I will ask the clerk to mark as Exhibit No. 93.

Mr. Subkow: I think that is right, isn't it?

The Court: A large drawing of Exhibit No. 56 showing derrick erected?

Mr. Subkow: Yes.

The Court: Mark it Exhibit No. 93, Mr. Clerk.

(The exhibit referred to was marked Plaintiffs' Exhibit 93 for identification.) [262]

Mr. Subkow: There are some unmounted copies of this that we can supply.

The Court: You have seen Exhibits 93, 94 and 95 before, have you?

The Witness: Yes, I have.

The Court: Did you prepare them?

The Witness: They were prepared under my supervision by a draftsman.

The Court: Did you ever see the defendants' equipment?

The Witness: I have seen the defendants' equipment.

(Testimony of Edmond M. Wagner.)

The Court: Do these exhibits 93, 94 and 95 purport to depict anything with respect to any of the defendants' equipment you have seen?

The Witness: They represent some types of the equipment that I have seen in California.

The Court: What types?

The Witness: Their drive-in type equipment at Terminal Drilling, for instance.

The Court: Any particular model?

The Witness: I don't know what the model numbers are designated.

Perhaps Mr. Woody could tell me the model of the Terminal Drilling.

The Court: The defendants' equipment at Terminal Drilling? [263]

The Witness: Terminal Drilling Company.

Mr. Woody: Well, Terminal Drilling has what is labeled in the '57 catalog on page 1885 as "Senior Clipper."

The Court: "Senior Clipper"?

Mr. Woody: That's right.

The Court: Is it agreed that the witness is referring to the defendants' "Senior Clipper" model?

Mr. Kenway: Yes.

Mr. Subkow: May I ask a question, your Honor?

The Court: Yes. I didn't mean to take over.

Mr. Subkow: Not at all. I think you have done very well.

Q. (By Mr. Subkow): In preparing these exhibits did you also use any of the exhibits that were offered in the Woody deposition?

(Testimony of Edmond M. Wagner.)

A. Yes. These exhibits were prepared from exhibits in the Woody deposition.

Mr. Subkow: In a moment we will identify them.

Q. (By Mr. Subkow): Are those exhibits the reduced drawings to which we have just referred, Exhibits 57, 59, 75 and 77?

Do you wish to see them?

A. I would like to identify them with the exhibits.

(Whereupon the exhibits were given to the witness.)

The Court: Do you have those exhibits before you now, [264] Mr. Wagner?

The Witness: Yes, I do.

The Court: Were these drawings, Exhibits 93, 94 and 95 prepared from those exhibits?

The Witness: They were.

Mr. Subkow: I have a further identification to make, your Honor, before asking that question.

Q. (By Mr. Subkow): Did you also employ any of the photographs shown in the trial exhibits 54 and 55?

A. They were used as references to clarify some details.

Q. Did you use this exhibit, Exhibit No. 97, or the features shown on the Terminal rig, from which this photograph was taken, in your thought or—

A. Yes. That photograph was used to clarify certain supporting elements in the drawing.

Q. In what exhibit? A. Exhibit 95.

Q. Mr. Wagner,—

(Testimony of Edmond M. Wagner.)

Mr. Subkow: Do I need to qualify him to make this comparison? Is that admitted, or do I have to qualify him?

Mr. Kenway: I don't think I have any objection, but frankly—

The Court: Anything further?

Mr. Subkow: Then I was going to ask him the question [265] your Honor asked him, whether or not these drawings, 94, 95, and 93 fairly depict the structure as shown, as you saw it, and as it was revealed by these exhibits, Woody exhibits, to which you referred.

The Court: Exhibits 57, 59, 75 and 77.

The Witness: They do so—

Mr. Subkow: And Exhibits 1 and 2.

The Witness: They do so represent. 59 is related to 95.

The Court: Exhibits 1 and 2?

Mr. Subkow: Of the Woody deposition, Exhibits 54 and 55.

The Witness: Exhibit 57 is related to the one on the left there. What is the exhibit number there?

Mr. Lyon: 93.

Mr. Subkow: 93.

The Witness: And 75 and 77 are related to 94.

Q. (By Mr. Subkow): May I ask whether in presenting these exhibits that it was intended that this Exhibit 94 should show the planned view of the outrigger section, that is, the extended leg portions which are used in both Exhibits 93 and 95?

In other words, did we avoid a duplication of

(Testimony of Edmond M. Wagner.)

Exhibits by not making a similar one to correspond to 95?

A. Yes. In 93, the outriggers in 93 and 95 are quite similar in construction, so we made only one view [266] illustrating exactly the ones in 93.

Mr. Subkow: May they be received in evidence?

The Court: Any objection, now?

Mr. Kenway: No objection, your Honor.

The Court: Received in evidence. Exhibits 93, 94 and 95. 94 and 95 are now received for all purposes, having heretofore been received for a limited purpose. And 93 is received for all purposes.

(The exhibits referred to, marked Plaintiffs' Exhibits 93, 94 and 95, were received in evidence.)

Mr. Subkow: We have extra copies of some of this which I would be glad to give to opposing counsel. I think this is one you had.

Mr. Kenway: We have that.

Mr. Lyon: We have a 95. We have no 93.

Mr. Subkow: We will look, and if we find them we will supply them to you.

The Court: Any further questions of Mr. Wagner?

Mr. Subkow: Well, not at this point.

The Court: Any cross examination at this time?

Mr. Kenway: No, your Honor.

Mr. Subkow: May we reserve the right to call him on another point for another purpose?

The Court: Yes.

You may step down, Mr. Wagner. [267]

(Witness excused.)

Mr. Subkow: I wonder if we could take a short recess so I can collect my thoughts?

The Court: Yes.

(Short recess.)

Mr. Subkow: Your Honor, we took the liberty of glancing through your list of exhibits. We find that one of the exhibits is unchecked by you, and that is one of the exhibits that went in with the bulk offer with the Woody exhibits.

The Court: Which exhibit is that?

Mr. Subkow: Mr. Clerk, do you remember what it is? It's 24, or something. It's unchecked along your list.

The Court: I have Exhibit 24 checked.

Mr. Subkow: I don't remember the number.

The Court: I hadn't checked the Waldrip brochure which was on your list as trial exhibit 22, but it was received as Defendants' Exhibit H.

Mr. Subkow: We just want to make sure that all of these exhibits are in.

The Court: That's according to my check. But what I check doesn't count. What the clerk checks is what counts.

Does the clerk show that all exhibits are in? [268]

The Clerk: My list shows they are in.

Mr. Subkow: If we find we are in error, we can make an offer.

The Court: Very well. If you need to reopen, you may reopen for that purpose.

Mr. Subkow: Thank you, your Honor. In that case we will rest our case. [269]

Mr. Kenway: May I make a brief opening statement, your Honor?

The Court: You may.

Mr. Kenway: The purpose of my statement is, primarily, to boil down the issues, and I will speak first of infringement.

We had intended to put on two witnesses on that subject, but these devices are boring me as much as they have your Honor, and I propose not to do that, and go ahead on the assumption that we can file briefs based on the exhibits, and argue the matter of infringement on that basis.

The Court: I didn't want to suggest that this was not an interesting case to me,—

Mr. Kenway: No.

The Court: —but you can get bogged down into details sometimes where it becomes very tiring.

Mr. Kenway: I find it so. Then I would like to say that our position on infringement has to do with the file wrapper. It is a rather bulky file wrapper, and I am referring to Exhibit T, and I thought if your Honor had no objection, I would simply like to indicate two parts of that file wrapper which I believe are significant.

The Court: Has it been received yet?

Mr. Kenway: No, your Honor.

The Court: Do you offer it? [270]

Mr. Kenway: I offer it in evidence.

The Court: Any objection?

Mr. Subkow: No objection.

The Court: Exhibit T, the file wrapper, is now received in evidence.

Mr. Kenway: And Exhibit T-1 has already been received in evidence, I believe.

The Court: That is the book of prior art patents cited in the file wrapper?

Mr. Kenway: Yes.

Mr. Subkow: May I ask for what purpose they are being offered? As a general offer, or is there a limitation to the offer in evidence?

Mr. Kenway: I am offering them as the patents referred to in the file wrapper, and showing the state of the art as the Examiner saw it.

Mr. Subkow: But not upon the issue of validity, and only on the issue of infringement?

Mr. Kenway: That is right.

The Court: I suppose it is relevant to the issue of validity as showing the state of the prior art and as positively negating the invention.

Mr. Subkow: No, your Honor. That is the very point that I just made my objection on. In view the stipulations, and in view of the answers to the interrogatories, and in view [271] of the fact they are not cited, under the statute they are not available to this defendant in this lawsuit as showing either invalidity or non-infringement, but only available as showing what the Examiner intended to grant.

Mr. Kenway: I differ with that, your Honor. I thought I made myself quite clear on that yesterday. I believe I said that we are not asking the court to declare the patent in suit invalid as anticipated by any of the patents in Exhibit T-1.

The Court: You mean anticipated in a strict sense.

Mr. Subkow: Then I think we ought to refer to the admissions.

The Court: Would it help, Mr. Subkow? Of course, you start out, certainly, as to the art cited that the patent is *prima facie* valid.

Mr. Subkow: That is the point.

The Court: And the burden is upon the defendant to overcome that presumption.

Mr. Subkow: Exactly.

The Court: And there might be two ways to overcome it. First, to show some prior art patents, cited or not, that pertain strictly to anticipating the invention, and the other is to negative the contention that what is done here rises to the dignity of an invention by showing that the state of the prior art was such that this advance did not [272] rise to the dignity of invention.

It seems to me that latter issue is always present in the case from the point of view of the plaintiffs' interests.

Mr. Subkow: That is true. Of course, your Honor, there is always this third party in all of these lawsuits, and we understand your Honor's obligation to the public is just as important as it is to the litigants. But these actions are also *in personam*. They are not *in rem*. And in this particular case the defendants have agreed that these things are not a part of the prior art, they will not rely upon them as the prior art, and the only thing they will rely upon were certain specific elements.

The Court: What does the statute require that they give you notice of?

Mr. Subkow: It is not only notice. It is estoppel by admission, too.

The Court: What does the statute require that they give you notice of? What patents?

Mr. Subkow: Both on the issue of prior art, and on the issue of invention, and on the issue of anticipation. The statute says—and may I have the statute? And this is all discretionary with your Honor, anyhow, and you could relieve them of that.

The Court: Yes.

Mr. Subkow: But in addition to that, we have the [273] specific admissions and the specific answers to the interrogatories, where they say they will not rely upon them. Of course, they may be relieved of that, too, but we prepared this case on the assumption that we would not have to meet these but on the issue of validity.

Mr. Kenway: I think my statement, that I am not asking the court to declare the patent in suit here invalid on the basis of the patents in T-1, should cover it. I do claim that I am entitled to show what was before the Patent Office Examiner.

Mr. Subkow: I have no objection to that. Of course, you are permitted to do that.

The Court: Very well. Are you offering it for the limited purpose of aiding the interpretation of the file wrapper? Is that it?

Mr. Kenway: Yes, sir.

The Court: There is no objection to that?

Mr. Subkow: No objection.

The Court: No objection to Exhibit T-1 for that purpose. Very well. Exhibit T is received generally, and Exhibit T-1 for the limited purpose stated, namely, to aid interpretation of the file wrapper.

(The exhibits heretofore marked Defendants' Exhibits T and T-1, were received in evidence.)

[See Exhibit T-1 in Book of Exhibits.]

Mr. Kenway: I don't propose to read from the file [274] wrapper, but just to indicate on the record two particular places in the file wrapper that we believe should be considered in connection with that defense of file wrapper estoppel, and the first reference I should like to make appears at page 17 of the file wrapper as Claim 6, and the second portion of the file wrapper comes on page 48 in an amendment which Mr. Subkow filed, making the usual argument to influence the Examiner to grant the patent. And we say that when you look—

The Clerk: Is that Exhibit T?

Mr. Kenway: Exhibit T.

(The document was handed to the court.)

Mr. Kenway: We believe, your Honor, that you will find that when you read Claim 6 and see what it was that Mr. Moon originally attempted to patent, and then read the statement to the Examiner concerning what it was—

The Court: Where does that appear now in the file wrapper, Exhibit T?

Mr. Kenway: Well, let's look at page 48, sir.

The Court: I don't care to hear the argument now, except I just want to be cited to it now.

Mr. Kenway: Yes. Claim 6 appears on page 17 of the file wrapper, and the remarks of Mr. Subkow I refer to appear on page 48 of the file wrapper.

The Court: Very well. [275]

Mr. Kenway: Now, with respect to the issue of validity, it is our position that the patent in suit is invalid because of the publication more than a year before the application was filed of certain advertising literature which disclosed the alleged invention of the patent in suit.

Some of those publications were before your Honor on our motion for summary judgment. We will offer the evidence of persons skilled in the art as to what those publications mean to them, and I believe your Honor will then conclude those publications indeed disclose every material element which is contained in the claims of the patent in suit.

The Court: Now, were those publications prior to the stipulated date of invention?

Mr. Kenway: No, your Honor. They came in the spring of 1947, and the stipulated date of invention was December 12, 1946. Those publications are not going to be offered as prior art, because obviously they are not.

However, the statute requires that a patent application be filed within a year from the time the invention is either first used in public, or sold, or described in a printed publication.

The Court: You are relying here then upon subsection (b) of Section 102—

Mr. Kenway: Yes.

The Court: —of Title 35, namely, that “the invention [276] was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.”

Mr. Kenway: Precisely.

The Court: So you are not bringing in the question under subsection (e), whether the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the plaintiff—

Mr. Kenway: No.

The Court: —or by the applicant.

Mr. Kenway: I might also say that in connection with those advertisements, we are not relying on Section 103, which relates to the prior art, because these publications are not prior art. They are a statutory bar to the granting of the patent under Section 102.

We also have in Exhibit S a collection of prior art patents of which due notice was given.

The Court: Do you offer those at this time?

Mr. Kenway: I offer the book of prior art patents, Exhibit S.

Mr. Subkow: May I ask whether, in view of the answers to the interrogatories stating that two of these constitute the best reference, whether all of

the references will be [277] discussed, or whether only these two will be discussed?

Mr. Kenway: Well, the answer you refer to says that we were currently of the opinion that the best references were the patents to Morton, which happens to be the first patent in Exhibit S, and the patent to Evans, which happens to be the last patent in Exhibit S.

Since that time, in discussing the subject with our expert, I discovered something I had not known before, and that is that the subject matter of the Downie patent, which is the second patent in Exhibit S, represents apparatus patented way back in 1914, but still in use in the oil fields, and, consequently, we will have some discussion of that patent, as well as the patents to Morton and Evans.

The Court: Exhibit S is received in evidence, I assume, without objection.

Mr. Subkow: Yes, your Honor.

The Court: Very well. So ordered.

(The exhibit referred to, marked Defendants' Exhibit S, was received in evidence.)

[See Book of Exhibits.]

Mr. Kenway: At this time I would like to call Mr. Purdum.

JOHN FRANCIS PURDUM

called as a witness on behalf of the defendants, being first sworn, was examined and testified as follows:

The Clerk: Will you state your full name, please?

The Witness: John Francis Purdum, P-u-r-d-u-m.

Mr. Kenway: Before proceeding with Mr. Purdum's testimony, your Honor, we have another witness who is due to meet us at 1:00 o'clock and needs to get away in a hurry, and I would like to ask permission to interrupt Mr. Purdum's testimony when he comes. It will only be about 15 minutes.

Mr. Subkow: No objection at all, your Honor.

The Court: Very well. You may do so.

Direct Examination

Q. (By Mr. Kenway): Mr. Purdum, do you have the book of patents, [279] Exhibit S?

A. No, I don't have that.

Q. You don't have one back here?

A. No, I don't have one.

Mr. Subkow: We are caught short. We didn't think we would be into this thing. We didn't bring our extra copies along. So I wanted to sort of have a huddle.

The Court: Do you need a copy?

Mr. Subkow: We have one set, but we have other sets that I wanted my associates to follow.

The Court: What is this, Exhibit S?

Mr. Subkow: Yes.

The Court: Perhaps the defendant has some others. Do you have an extra copy of the book of prior art?

(Testimony of John Francis Purdum.)

Mr. Subkow: We will manage, your Honor.

Mr. Kenway: Frankly, sir, I am in the same position. I didn't expect we would get started here. And we have another set back at the hotel.

The Court: Very well.

Q. (By Mr. Kenway): Mr. Purdum, what is your occupation?

A. At the time I am a consulting petroleum engineer.

Mr. Subkow: I will waive further qualification of Mr. Purdum.

The Court: Is it stipulated as to the witness' qualifications? [280]

Mr. Subkow: Yes, sir.

Mr. Kenway: Your Honor, in view of this business on the copies of the patents, I am rearranging the order of examination in order that we can come back after lunch fully armed with copies. And it is taking me just a minute or two to rearrange the approach.

The Court: Very well.

Mr. Kenway: I will offer in evidence Exhibit M, which is a publication in the Oil Weekly for May 5, 1947.

The Court: Any objection, Mr. Subkow?

Mr. Subkow: Excuse me. My mind was wandering.

The Court: Exhibit M is offered. It's an advertisement from the Oil Weekly. What issue was that?

Mr. Lyon: May 5, 1947, your Honor.

(Testimony of John Francis Purdum.)

Mr. Subkow: No objection.

The Court: It is said to be. Do you stipulate that it is?

Mr. Subkow: It is. And I stipulate as to the date.

The Court: Very well. Received in evidence.

(The exhibit referred to, marked Defendants' Exhibit M, was received in evidence.)

The Court: Give me that date again.

Mr. Lyon: May 5, 1947, your Honor.

Mr. Kenway: Now, I offer in evidence as Exhibit N page [281] 104 of the Oil & Gas Journal for May 10, 1947.

Mr. Subkow: Just hold it up so I can look at it.

Mr. Lyon: It's the same one.

The Court: Is it stipulated to be what it is said to be?

Mr. Subkow: Yes, sir. And as to the date.

The Court: Received in evidence. Exhibit N.

(The exhibit referred to, marked Defendants' Exhibit N, was received in evidence.)

Mr. Kenway: Now, as Exhibit O I will offer page 192 of the Petroleum Engineer for June '47.

The Court: Is it stipulated to be what it is said to be?

Mr. Subkow: Yes, sir.

The Court: Received in evidence.

(The exhibit referred to, marked Defendants' Exhibit O, was received in evidence.)

The Court: Now, I notice that it's June of 1947 and the patent application—that is, the application

(Testimony of John Francis Purdum.)
for the patent in suit, Exhibit 1, was filed June 28, 1948.

Is it stipulated that this exhibit was published prior to June 28, 1947?

Mr. Subkow: I would like to reserve that. I believe it was. But may I consult my records to see what I have discovered?

Mr. Lyon: If the court please, I think we can almost take judicial notice of the fact that the June issue comes out [282] in May and—

The Court: It might have been late that year, Mr. Lyon.

Mr. Lyon: It might have been. We have evidence on that if it is necessary.

Mr. Subkow: It won't be necessary if you can show me what your evidence is. I will agree with it.

Mr. Kenway: We can take care of that.

Mr. Subkow: Yes.

Mr. Kenway: As Exhibit P I offer in evidence page 234 of the Petroleum Engineer for May 1947.

The Court: Is it stipulated to be what it is said to be?

Mr. Subkow: Yes, sir.

The Court: Received in evidence. Exhibit P.

(The exhibit referred to, marked Defendants' Exhibit P, was received in evidence.)

Mr. Kenway: As Exhibit Q I offer in evidence the cover of the April 1947 issue of the Petroleum Engineer.

The Court: Is it stipulated to be what it is said to be?

(Testimony of John Francis Purdum.)

Mr. Subkow: Yes, sir.

The Court: Received as Exhibit Q in evidence.

(The exhibit referred to, marked Defendants' Exhibit Q, was received in evidence.)

Mr. Kenway: As Exhibit R, I will offer in evidence a photostatic copy of a page from the magazine Oil—or the newspaper Oil for April 24, 1947.

Mr. Subkow: I think we have an original excerpt of that, and I will offer it to the defendant to use in place, if they will exchange the photostat for it.

Mr. Kenway: Thank you very much.

Mr. Lyon: As a matter of fact, you supplied the photostat to me.

Mr. Subkow: That is right.

The Court: Is it stipulated to be what it is said to be?

Mr. Subkow: Yes, sir.

The Court: Received in evidence as Exhibit R.

(The exhibit referred to, marked Defendants' Exhibit R, was received in evidence.)

Mr. Subkow: We will find it this afternoon.

Mr. Lyon: We will put this one in in the meantime. It has been marked.

The Court: Very well.

Q. (By Mr. Kenway): Mr. Purdum, will you turn to Exhibit M? A. Yes, I have M.

The Court: Do you have it, Mr. Clerk?

(Whereupon the exhibit was handed to the court.)

Q. (By Mr. Kenway): Have you read the text

(Testimony of John Francis Purdum.)
and observed the photograph of the well servicing unit shown on Exhibit M? [284]

A. Yes, I have read the descriptive matter, and I have looked at the print.

Q. Will you please tell the court in your own words—or, rather describe to the court in your own words the equipment you see described and illustrated in Exhibit M?

Mr. Subkow: Your Honor, is this going to be just a reading of the document?

Mr. Kenway: No, indeed.

The Court: This is to be through the eyes of an expert in the art, is that it?

Mr. Kenway: Yes. I want to have him tell the court what a man skilled in the art derives from that publication.

The Court: The text and the photograph?

Mr. Kenway: Yes, sir.

The Court: Very well.

Mr. Kenway: Would you proceed, Mr. Purdum?

The Court: You are calling it a photograph. I suppose it is a drawing, strictly speaking, instead of a photograph, isn't it?

Mr. Kenway: Well, of course, in the magazine it is a photograph of a drawing.

The Court: Yes. I suppose that is precisely correct.

It might be more helpful for the witness to say what he sees in the drawing, first.

Q. (By Mr. Kenway): Will you please describe to the [285] court what you see in the drawing, independent of what you read in the text?

(Testimony of John Francis Purdum.)

A. In the drawing I see an automotive type of unit with two rear wheels and—that is, four rear wheels, two axles and with one axle in front with the steering device placed forward—that is, the steering wheel itself is placed forward of the front wheel, as is the cab enclosing the steering device and the seat for the driver with the necessary controls, of necessity, to run the vehicle placed in the same position.

I also see that there is a derrick or structural mast—

The Court: Where is the propelling power of the vehicle?

The Witness: The propelling power of the vehicle is shown to be at the rear, as evidenced by the louvers placed in the back section, as shown—those little lines are louvers to allow the air to circulate in this somewhat enclosed chassis.

The Court: That would indicate to you that those louvers are there to enable the circulation of air to ventilate the engine?

The Witness: Yes. It being the radiator on the engine is inside, there must be some means for the air to circulate. And I know that's quite common for some sort of a grille or louvers of some kind to be placed in the side of [286] the equipment of this type, and others that house engines.

Now, I further see that there are two drums placed in this unit, as evidenced by the two holes, or two round circles shown in the print.

The Court: That is, in the center section?

The Witness: In the center section, yes, sir, one

(Testimony of John Francis Purdum.)

almost directly above the front axle of the rear wheels and the other more or less amidship.

Q. (By Mr. Kenway): Mr. Purdum, why do they indicate to you that there are drums there?

A. Well, partially because I have had lots of experience with units of this type, and for what this is going to do I know there must be two drums to satisfactorily carry on the work of a unit of this type. And, furthermore, they are spaced—they are located, I should say, about where the drums would normally be for operating the line that carries the tubing block or traveling block, as it is sometimes called, and the other one is placed behind it so that it can operate a bailer to bail the well, or some other light device that needs to be operated rather rapidly.

Q. Would you go ahead, please?

A. I further see that this is a—that this derrick or mast, it's a welded construction, is made in two sections that can be extended to make a longer mast, one that will stick higher up in the air when it is raised at the location [287] and put into service.

Furthermore, this mast is hinged at a point in this drawing directly above the center of the steering wheel. This mast or derrick is pivoted at this point. This is a—it's real small, but there is a shaft located in this drawing directly above the driver's position, or, more specifically, above the steering wheel.

Also, there is a raising device, that is, a hydraulic ram, a hydraulic or air operated which is—the hy-

(Testimony of John Francis Purdum.)

draulic operation is much better, and so I know that from other instances of applications of this type of equipment that this is a hydraulic ram which is located in the position where it would be required to raise the derrick from the prone position in which it is hauled over the road. [288]

Q. Now, can you tell just by reference to what you actually see in that picture that there is a hydraulic pneumatic structure?

A. Well, I imagine that it has to do with me seeing and having known of devices of this kind for use in similar applications, but I can see the several steps in this drawing that indicate to me that that is not only a hydraulic ram type of thing, but that it has at least three sections. I can count three sections here that can extend one from the other to make a long enough ram to raise this derrick.

Q. Will you proceed to describe the other features you see in the drawing?

A. I see this derrick extends forward of the cab, and I took a pair of calipers, and the legs, although in the particular print I am looking at there is a bend in them, that is due to the book when the photograph was made—not the photograph, I mean when the photostat was made. The sheet wasn't smoothed out entirely straight. In other words, the book is bent a little, and that gives an indication that the derrick is bent. Well, it isn't bent because of the other prints that I have seen of this same drawing. But the leg extends far enough forward

(Testimony of John Francis Purdum.)

so that when the derrick is rotated, these legs come close enough to the ground that they can be blocked up under, or brought in contact with the ground in that manner. [289]

Now, let's see. I mentioned the cab extending forward. It has a side opening so that I can see the steering wheel. I mentioned the engine in back, and the two drums.

Q. What is that black member that is in the cab vertically, and appears to go through the steering wheel?

A. Well, that isn't too clear in this print, but there must be some support, and anyone designing a unit of this type from this drawing here would know that some support of some kind must be placed underneath that pivot point.

Q. What would happen if there was no such support?

A. Well, I would say that it would be very difficult to design a cab of a truck so that it would support the enormous load of the derrick and traveling block without considerable support.

Q. What is it that appears within the derrick structure over the cab, back to the left of the second cross brace?

A. That is what is called a traveling block, or sometimes a tubing block. This looks rather large, and so it is, at any rate, several sheaves,—a sheave block.

Q. And what is the structure that you see at the extreme left-hand end of the derrick?

(Testimony of John Francis Purdum.)

A. The structure at the left-hand side of the drawing is what is normally the top end of the derrick, and there is a sheave there, as evidenced by the circle drawn in the top block of the derrick.

Q. Assuming now that the derrick shown in this drawing has been erected, what would be the relationship of the legs of the erected derrick through the cab?

Mr. Subkow: Object, your Honor. I think the interrogation should refer to what is shown in the exhibit, not what the expert had known from his own experience.

The Court: Is that what you are calling for?

Mr. Kenway: Well, he said what the publication means to him.

The Court: We are dealing first, not with the publication, but with the drawing, as I understood the testimony up to this point.

Mr. Kenway: Yes, that is correct.

The Court: What this man versed in the art sees in this drawing.

Mr. Kenway: Yes.

The Court: Now, does your last question limit him to that?

Mr. Kenway: Well, no, it wouldn't, with the equipment in the position shown in the drawing, no, sir. I am asking what his opinion would be if the equipment which he has described were to be placed in a condition for operation.

The Court: As he sees it in the drawing?

Mr. Kenway: Yes.

(Testimony of John Francis Purdum.)

The Court: Why don't you amend your question? [291]

Mr. Subkow: Furthermore, if it requires the expert's opinion, that constitutes extrinsic evidence.

The Court: I suppose all of this is opinion in a sense.

Mr. Subkow: Oh, yes. It isn't the fact that it is opinion that is objectionable.

The Court: As he looks at the drawing, how would it be used, and what would it look like if it were extended? Is that what you are asking?

Mr. Kenway: Precisely, your Honor.

The Court: You may answer that.

The Witness: The front part of the derrick in the prone position consists of legs, and I can see two of them, the lower leg and the upper leg. Now, these legs, if they were located anywhere in the center of this conveyance, it would be impossible for them to be rotated when the derrick is raised into position without striking the front of the cab. So I know that one of these sets of legs must be on one side of the cab, and one on the other, because it is impossible to design a derrick with only one leg so that it could be raised with the hinge point as shown in this drawing.

The Court: What is that shaded rectangle at the left-hand end of the derrick in the drawing?

The Witness: At the left-hand end of the derrick?

The Court: Yes. [292]

The Witness: I believe you are referring, your

(Testimony of John Francis Purdum.)

Honor, to what is sometimes called a crow's nest, or, at any rate, those are structural members welded to the side of the derrick in order that the four legs, or that the two legs that are visible there can be fastened together and the sheave located between the two sections.

The Court: Is that what the shaded rectangle up there is?

The Witness: Your Honor, this is what you were referring to, I believe (indicating)?

The Court: Yes, but I have a white copy, and you have a black copy.

The Witness: Well, I guess that was a little reason, but that is what I am referring to, which would be the top part of the derrick when it is raised.

The Court: Could you answer better if you had this copy?

The Witness: Well, I don't like to take your drawing. Maybe there is another one.

The Court: Is there another white copy?

Mr. Kenway: Yes, your Honor.

(Handing document to witness.)

Mr. Subkow: Your Honor, may we inquire whether the defendants have the originals of the documents from which these photostats were taken?

Mr. Kenway: No. [293]

Mr. Subkow: Are they available anywhere?

Mr. Kenway: Yes.

Mr. Subkow: Where are they?

(Testimony of John Francis Purdum.)

Mr. Kenway: I have seen them in the library at the Massachusetts Institute of Technology.

Mr. Subkow: The point is that if we obtained the originals of these, may we offer them in substitution, or for temporary use? Maybe we can borrow them from the library.

Mr. Kenway: I think that would be fine. I would like to join with you in doing that, if we can get that.

Mr. Subkow: We will try it.

Q. (By Mr. Kenway): Looking at the other copy of Exhibit M, have you any corrections or additions that you want to make?

A. Just looking at the drawing?

Q. Yes.

A. Well, there are more things that I can see in the print, such as the ladder that would enable someone to climb the derrick when it is extended; a board that is placed on the derrick, which can be called a tubing board, or a rack.

There are the diagonal members that are welded in order to make the structure more or less—that is, more rigid. I am speaking of those diagonal members that go from the [294] lower leg to the upper leg.

There is a support at the back end of the truck, showing that the mast when it is in the prone position will ride in substantially a horizontal position.

Q. The drawing does not show you where the lower end of the ram is connected, does it?

(Testimony of John Francis Purdum.)

A. No, it doesn't show exactly, but knowing that it must be of some length, and sufficient so that it can raise the derrick, I know that it is located down on or substantially on the members that are run between the front and rear wheels making the chassis of the mobile unit.

From this drawing I can't tell if there is one or two rams. It doesn't indicate on the drawing whether there is one or two, but that is a minor matter. It depends upon the size and the amount of hydraulic pressure you require, whether you have one or two rams.

Mr. Kenway: If your Honor please, the witness has testified concerning what the drawing means to him. As far as the text is concerned, I believe that should speak for itself, unless there are some technical matters referred to there on which it would be helpful to your Honor to have expert assistance.

The Court: No, unless you want the record to show some interpretation of it.

Mr. Kenway: No, I am satisfied with it. [295]

The Court: The problem here, of course, as I view it, is whether this drawing discloses the invention as taught in the patent.

Mr. Kenway: Yes, sir.

The Court: That is the patent in suit, Exhibit 1.

Mr. Kenway: It is not just the drawing, your Honor.

The Court: The drawing with the text,—

Mr. Kenway: Yes.

(Testimony of John Francis Purdum.)

The Court: —the entire information.

Mr. Kenway: And we have had an expert's opinion on what the drawing shows, and it seems to me the text can be taken in conjunction with the witness' testimony, and that it speaks for itself.

The Court: Very well.

Q. (By Mr. Kenway): Now, would you turn to Exhibit N, Mr. Purdum. I will simply ask whether or not the drawing shown in Exhibit N differs from the drawing in Exhibit M, concerning which you have testified.

A. I think they are identical drawings. They are different in size, so they have been changed, that is, the people that printed this sheet did not use the same cut as was used in the other publication, but it is a cut made from the same drawing.

Q. Now, would you turn, please, to Exhibit O.

A. I don't happen to have O in front of me.

The Court: Will you hand it to the witness?

(The document was handed to the witness.)

Mr. Kenway: Your Honor, Mr. Subkow tells me that, believing we would not get along so fast, he did not bring his copies of these exhibits.

The Court: Then we will take the noon recess at this time until 2:00 o'clock.

(Whereupon at 11:55 o'clock a.m., an adjournment was taken until 2:00 o'clock p.m. of the same date.) [297]

Thursday, March 27, 1958. 2:00 p.m.
(Other court matters.)

The Court: All right. We will proceed with Moon against Cabot Shops.

Mr. Lyon: If the court please, at this time we will call Mr. Stan Groner.

While Mr. Groner is taking the stand, I will state that I believe we have entered into a stipulation that Exhibit O was published prior to the filing of the application for the patent in suit, and that if called to the stand Mr. Crowley would testify that he personally saw a copy of Exhibit O in the library of the Massachusetts Institute of Technology with a date of filing stamped stating that it was received by that library on the 4th day of June, 1947.

Is it so stipulated?

Mr. Subkow: I need no such assurances. Their word is good enough. I will accept the exhibit as to its proper date.

The Court: And that it hadn't been published more than a year prior to the filing of the application for the patent in suit?

Mr. Subkow: Of course, your Honor.

The Court: Very well.

Mr. Lyon: Has the witness been sworn? [298]

The Clerk: Not this witness.

STANLEY GRONER

called as a witness on behalf of the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your full name, please?

(Testimony of Stanley Groner.)

The Witness: Stanley Groner, G-r-o-n-e-r.

Mr. Lyon: If the court please, we appreciate the courtesy of interrupting the testimony of Mr. Purdum so that this witness, who is an employee of one of the local manufacturing concerns, can get back to his job.

I would state for the record that if you will look around you will see that Mr. Purdum has been excluded from the courtroom so that he will not hear the testimony or the cross examination of this witness, which might possibly affect Mr. Purdum's testimony.

Mr. Subkow: I think your Honor is entitled to an explanation.

I understand that this witness will be testifying over exactly the same ground that Mr. Purdum will be testifying. In other words, we are having two witnesses on the same subject. And I don't quite understand, but there must be some point in that.

Mr. Lyon: You will, Mr. Subkow, as we proceed.

Mr. Subkow: I am sure. But I don't think it would [299] be fair for one witness to hear the cross examination which might influence his testimony.

The Court: Very well.

Do you think that it's necessary to have two experts on this subject?

Mr. Lyon: Well, if your Honor will bear with me for a minute I think you will see what is going on.

The Court: Very well.

(Testimony of Stanley Groner.)

Direct Examination

Q. (By Mr. Lyon): Will you state your educational qualifications, Mr. Groner?

A. Yes. I graduated from California Institute of Technology with a Bachelor of Science degree in mechanical engineering.

Q. And since you received that degree in mechanical engineering at Cal Tech have you been employed locally?

A. Yes. I have been employed by Hydro-Air Incorporated in Burbank.

Q. What is the business of Hydro-Air, in general?

A. We manufacture aircraft accessories.

Q. What has been your assignment at Hydro-Air?

A. More recently I have been project engineer in charge of aircraft fuel pumps, and previous to that I did [300] design work on the same subject, and also laboratory test work on the same subject.

Q. Now, you first met me when I called you in as a witness in my capacity as attorney for Hydro-Air, is that a fact? A. Yes, that's right.

Q. And your association with me has been entirely on the business level? A. That is right.

Q. Now, have you ever seen a copy of the patent in suit in this case?

A. I don't know what that patent is.

Q. You never have seen a copy? A. No.

Q. Have you ever seen a portable drilling rig?

(Testimony of Stanley Groner.)

A. The only drilling rig which I have seen which might be considered portable is one that I saw at a site for a water well. [301]

Q. Have you ever seen a portable drilling rig for servicing oil wells? A. No, I have not.

Q. Have you ever seen any of the patents that have been pleaded by the defendant in this case?

A. I don't know what they would be.

Q. You have, however, been shown copies of certain publications, such as, for instance, Exhibit P, which is before you, have you not?

A. Yes, I have.

Q. I might ask you, have you ever worked on an oil well drilling rig? A. No, I have not.

Q. Then, I take it, that you are more or less free from any specialized knowledge with respect to oil well drilling rigs; is that so? A. Yes.

Q. But you are a design engineer?

A. Yes.

Q. Now, I ask you to take a look at Exhibit P, which is before you, and tell me what it teaches you as a design engineer as to the design of whatever that is that is shown in the drawing and text in Exhibit P.

Mr. Subkow: I object, your Honor. It has been fully proven that this man is not qualified to answer that question. [302]

The Court: He is qualified to say what he sees there, isn't he?

Mr. Lyon: The point of the whole thing, your Honor, is that Mr. Subkow would quite properly

(Testimony of Stanley Groner.)

argue that Mr. Purdum is an expert in this art, that he knows all about the patent in suit, and knows all about the accused device, and can take the drawings and find the various elements of the patent, because he knows what would be done. But here is a man absolutely innocent of that special knowledge, and I want to show you he can do as good a job of that as Mr. Purdum did.

The Court: The objection is overruled. He may answer.

The Witness: Then I would describe this as a self-propelled servicing and drilling rig that drives into the location nose first. It seems to be a truck which has three sets of wheels, a cab, and—

Q. (By Mr. Lyon): What are the wheels supported on?

A. I presume you mean axles, or something of that sort?

Q. Are there three axles there?

A. Yes, there would be three axles.

Mr. Subkow: I object, your Honor, and move the answer be stricken. We are dealing with what is shown in the drawing, not what he presumes is shown in the drawing.

The Court: That is probably a habit of speech. We can't [303] take presumptions.

The Witness: Yes, sir.

The Court: You have to state what you see there.

Q. (By Mr. Lyon): Just go ahead and state what that drawing and text teaches you with respect to that item?

(Testimony of Stanley Groner.)

The Court: And there can't be any maybes about it. It does or does not. It teaches you or it does not teach you.

The Witness: Then if I could go back about the wheels?

The Court: We can't have maybe three wheels. You have either two, or four, or whatever there are.

The Witness: Yes, sir. There are three wheels shown.

The Court: We would all like to do that. I would like to render maybe judgments, and it would be lots easier than to say it is this way or that way, you see.

The Witness: I could say that from my knowledge of such vehicles this drawing would indicate that the wheels would be attached to the truck by means of axles. Would that be satisfactory?

Mr. Subkow: I think that perhaps the witness will need some additional instruction from your Honor as to reading what the thing shows, and not what may be read into it.

The Court: It is not what you guess from it, and not what you deduce, but what does that drawing teach you—

The Witness: All right. [304]

The Court: —as a mechanical engineer.

The Witness: All right.

The Court: What do you read, as you read that drawing?

The Witness: On top of the vehicle—

(Testimony of Stanley Groner.)

The Court: What kind of structure does it teach you to make—

The Witness: All right.

The Court: —if you were trying to depict it? Would that be fair?

Mr. Subkow: Yes.

The Witness: This would teach me to make a self-propelled vehicle, which has a cab, which has an engine, and which has a telescoping derrick. The derrick is mounted on top of the vehicle. The two pictures show that in one position the derrick is carried in a horizontal position, and that it may be erected into a nearly vertical position, and also extended.

Q. (By Mr. Lyon): How is it moved, if you can tell from the drawing, how is it erected from the horizontal to the nearly vertical position?

A. There is a device that is located to the rear of the cab, which looks like it would be a jack of some sort, which could apply a force to the derrick, which would erect it. In that case the derrick would be hinged at a point just above the cab. The end of the derrick which is in front of the cab would go to the ground, and would be supported on the [305] ground.

Q. What would be the relationship of the parts you have just referred to as going to the ground with respect to the cab in the erected position?

A. The ends which would serve as legs would be below the cab. One set of legs in the small drawing appears to be just in front of the cab, and the rear

(Testimony of Stanley Groner.)

legs would be right underneath the cab in front of the front wheels.

Mr. Subkow: May I inquire from what portion of the exhibit the witness is testifying?

Mr. Lyon: I believe he is testifying from the trademark at the present time, isn't he?

Mr. Subkow: May we ask the witness that question?

The Witness: Well, I am looking at Exhibit P.

Mr. Subkow: Exhibit P. Would you identify it by the date, please?

The Witness: Yes, it says "The Petroleum Engineer of May, 1947," in the lower right-hand corner, and it has the number 234 in the left-hand corner.

Mr. Subkow: That is Exhibit—

Mr. Lyon: That is right, Exhibit P.

The Witness: And there are two pictures of this device shown on this page, and I am referring to both pictures.

Q. (By Mr. Lyon): Now, I would like again to call your attention to the derrick. Is that an open frame work? [306]

A. Yes, it is open. It is not filled in between the structure.

Q. Is there a cross bracing on there?

A. Yes, there are cross bracing.

Q. Compare the cross bracing in the section nearest the fore part of the cab with the section right behind it.

A. The cross bracing just above the cab, the braces go from the portion of the structure which

(Testimony of Stanley Groner.)

would be on the top in the horizontal position, and in the front in the erected position, and these braces go from there to just above the cab, forming a V with the vertex—or, triangle with the vertex right on top of the cab, and the—

Q. Well, you may have answered this question, and I may have missed it, but I want to beg indulgence and ask it again in case I did miss it. Where would the rear legs of the derrick be with respect to, shall we say, the steering wheel in the erect position?

A. If by the rear legs you mean the legs that are to the bottom when the derrick is in the horizontal position, and towards the rear of the truck when it is in the upright position,—

Q. That is right, that is what I mean by the rear legs.

A. —those legs would be just about underneath the steering wheel. [307]

Q. You mean side by side of the steering wheel? Is that what you mean?

A. Below it, and if we were to draw a vertical line from where those rear legs rest on the ground, it looks like it would go through the steering wheel.

Q. I believe you have testified that there is something which appears to you to be a jack.

A. Yes.

Q. If that is a jack, how would it be connected to the vehicle?

Mr. Subkow: I object, your Honor. The question is not directed to what the picture shows.

(Testimony of Stanley Groner.)

Mr. Lyon: I assume it is. He is an engineer and is interpreting a drawing.

Mr. Subkow: It is not what he is reading into the drawing. It is what the drawing shows.

The Court: If he says it appears to be, it means he perceives it with his sense of sight, I assume.

Mr. Lyon: Yes.

The Court: Overruled. We are getting into language troubles now.

Mr. Subkow: Well, language is a little important in these matters.

The Court: Yes, it is, but if the witness says it appears to him to be, he perceives it with his senses.

Mr. Subkow: If so understood, all right.

The Witness: Would you repeat the question, please?

Q. (By Mr. Lyon): I said if that is a jack, which you said it appears to be,— A. Yes.

Q. —I said, how would it be connected to the vehicle?

A. It is in two different positions in the two views, so it must be connected at some sort of hinge pin. [309]

Q. Or pivot, can we say?

A. Yes. A pivot would be the same.

Mr. Subkow: Just a moment. The question and answer raises my very point. May we have the question and answer read by the reporter?

The Court: Please read it, Mr. Reporter.

(Record read.)

(Testimony of Stanley Groner.)

The Court: Do you mean by "it must be," that it appears to you to be?

The Witness: Must be—

The Court: You see, when you say "it must be" you are arguing your answer, and you haven't even given us an answer.

If you say "It is connected there," or "appears to be connected" to you, and then if the other attorney says, "How do you know," then you can say, "It must be." You can argue your answer then.

The Witness: I see, your Honor.

The Court: All you are doing now is giving your answer. You don't argue.

Now, if you see it there, if you perceive it there, then you may say so.

Q. (By Mr. Lyon): I believe you stated, Mr. Groner, that you see it—

Mr. Subkow: May we have the answer?

The Witness: From the— [310]

Mr. Subkow: I don't think that it's fair for the interrogater to place words in the witness' mouth.

Mr. Lyon: I am not placing words—

The Court: Well, that is objectionable as to form. This is a very intelligent witness. Let him proceed. I think he knows the problem, what he is here for.

Mr. Lyon: Well, is there a question before the witness?

The Witness: Unless there is further clarification required about how this thing is joined to the vehicle.

(Testimony of Stanley Groner.)

The Court: Well, you tell us how you see it is from that drawing, as a mechanical engineer.

The Witness: I would say from these two views it is joined at a hinge point by a hinge joint.

Q. (By Mr. Lyon): All right. Where would that hinge joint be on the vehicle with respect to the front end rear axles?

A. It would be between the front and rear axles.

Q. In the large drawing do you perceive—I believe you stated you see a steering wheel, is that correct? A. Yes.

Q. Where is that steering wheel with respect to the front axle?

A. It is in front of the front axle.

Q. I am handing you a document which is in evidence as Defendants' Exhibit M, and I ask you if from the drawing [311] and the text of Exhibit M you would testify that you receive substantially the same teaching as you have received from Exhibit P.

The question can be answered yes or no.

A. From the picture—it is substantially the same picture, just a little different size, as the large picture in Exhibit P with the derrick horizontal.

Would you like me to read the text and compare that, too?

Q. Oh, I forgot to ask you one thing about Exhibit P. Does it say anything, or does it teach you anything about where the motor would be located?

(Testimony of Stanley Groner.)

A. Yes. It says that the motor is located in the rear.

Q. All right. Going on with Exhibit M—

Mr. Subkow: I beg your pardon. Was that answer in connection with Exhibit P or Exhibit M?

The Witness: It's Exhibit P.

Q. (By Mr. Lyon): Going on with Exhibit M, I ask you if your testimony would be substantially similar as to the teaching you receive from Exhibit M as it was as to Exhibit P?

A. All right. Let me read the text, please.

Well, it adds one point that was disputed before, and that is, it says in Exhibit M that there are six wheels [312] and before I could only say that I saw three wheels.

Q. That's about all that it differs from the teaching you got from Exhibit P, is that correct?

A. That's correct.

Q. I hand you Exhibit N and ask you the same question with respect to Exhibit N.

A. Here again the picture is essentially the same, just of a different size.

Yes, I have learned substantially the same thing from this exhibit.

Q. I hand you Exhibit P—

Mr. Lyon: No. We have already testified to Exhibit P. Have we two of them here?

Q. (By Mr. Lyon): I hand you Exhibit Q and call your attention to the cover of that and ask you if your answer would be the same as to Exhibit Q as it was to M, N and P?

(Testimony of Stanley Groner.)

A. I seem to have lost P here.

Q. I gave you the original instead of the copy.

A. Yes. If this is Q it looks identical to P.

Q. It's exactly the same, the publication is, except that it's another— A. Right.

Q. I hand you Exhibit O and call your attention that this is somewhat different and ask you if you would get the same teaching from Exhibit O as you got from these other [313] M, N, P Exhibits, and if you see anything there in addition that you would gather from the exhibit—whatever it is you have before you—on O that you didn't gather from any of the other exhibits.

A. Well, in this exhibit I can see the axle joining the two front wheels which I couldn't see before. And I have a little better picture of the derrick because it shows part of the end of it. I can see all four legs now, which I couldn't see before. That's about what it adds.

Mr. Subkow: May I have that question?

(Question read.)

Mr. Subkow: Is it proper for me to ask a question through the court?

The Court: You may.

Mr. Subkow: Very well. Do I understand that the witness is testifying that he gets the same teaching out of this exhibit that he got out of the others?

The Court: "This exhibit" being—

Mr. Subkow: The same teaching out of Exhibit O as he did the other exhibits.

The Witness: I said that I have learned a little

(Testimony of Stanley Groner.)

bit more in this exhibit than I saw from the others.

Mr. Subkow: You mean merely in addition to, but except for that difference it is the same as the others?

The Witness: That's right. [314]

Q. (By Mr. Lyon): I hand you Exhibit R and ask you the same question.

A. That is the same picture, essentially; just a different copy.

Q. The same as P and Q, is that right?

A. Yes.

Mr. Lyon: Those are all the questions I have of this witness.

Cross Examination

Q. (By Mr. Subkow): Mr. Groner, if I were to ask you to assume that there were two-legged telescopic derricks side by side, not four-legged telescopic derricks, and you had that information at the time that these exhibits became reality, were published, would your conclusion, omitting your reference to Exhibit O, be the same with respect to these exhibits with respect to their being a four-legged derrick, as you testified?

A. I can't really accept what you said at the beginning because I don't understand how a two-legged derrick—I don't see how a two-legged derrick would be—

Q. I am asking you to assume that fact to be a fact.

A. Since all the other exhibits, with the excep-

(Testimony of Stanley Groner.)

tion of Exhibit O, just show a side view, I can only see [315] one side and consequently I only see two legs.

Q. In that case your whole testimony would have to be different from that respect?

A. I don't believe that in my original testimony I said that there were four legs previous to seeing Exhibit O.

Q. If there were only two legs you would then have to assume that the legs were where positioned in order for them to—in what respect they would have to be positioned in order for them to take the posture that you testified you read into the exhibit.

A. If this were a two-legged derrick, then in the picture with the derrick erected I would say that they would be between the viewer and the truck.

Q. In that case they couldn't be hinged, could they?

A. I don't understand that question.

Q. I mean, how could you get it off the truck and standing up if it were hinged, in your view?

A. Well, there is certainly a hinge joint between the end of the jack and the derrick.

Q. I am not talking about that hinge joint, assuming there is one.

How, in your view, would that derrick get off that truck and stand up, as it does in the trademark, if it were a two-legged derrick? [316]

A. Well, I would say that there must be some hinge point other than at the end of the jack in order to get it to come down with this end first.

(Testimony of Stanley Groner.)

Q. In other words, you need additional information than is apparent in these exhibits in order to answer that question, wouldn't you?

A. I see the derrick in two positions, one with it horizontal and one with it vertical; and I have to ask myself, "Well, how does it get into the vertical position?" And so—

Q. It being a two-legged derrick.

A. The answer that I give myself is that the jack pushed the derrick up, and by using some other technique such as the hinge point or hinge or pivot, the derrick would then go down with the legs to the ground.

Q. Well, it would have to go down between the observer and the picture, would it not?

A. Yes.

Q. Then it would have to sort of slide off to the side and get down and stand up?

A. That wouldn't be necessary.

Q. Have you ever—

A. I don't understand that question.

Q. Well, perhaps I don't understand the testimony too well. We see the picture on Exhibit Q, for example. You state that as far as Exhibit Q is concerned— [317] A. Yes.

Q. —we can only see a derrick with two legs. Is that correct? A. That's right.

Q. And that, of course, you say is resting on top of the cab. Is that correct?

A. It's resting on top of the device, yes.

(Testimony of Stanley Groner.)

Q. Yes. Well, then, it must be within the confines of the lateral sides of the cab.

A. Not necessarily. [318]

Q. Well, where would it be, in your opinion?

A. Well, it could be on either side, or on top of it.

Q. Let's see. There would have to be some provision that would have to be made to carry it so it is on the side of the cab, so that if it slides down alongside of the truck, to get the position in the trademark?

A. Well, in this picture, as I mentioned before, I can see one side of a derrick, and let's say it is a two-legged derrick, and there is what appears to be a jack attached to it. Now, there could be a cross member which went across the top of the truck, to which that jack was attached, and then this two-legged derrick could be at the end of that cross member, so that it could be on the side of the truck, or it could be on the top of the truck. I can't tell from this view.

Q. That is right. So that in order to complete your interpretation of what these pictures show in Exhibits P and Q and in Exhibits M and N, which you say are the like structure, you would need the information that is at present in Exhibit O, wouldn't you, which tells you it is a four-legged derrick? A. That's correct.

Q. Now, will you look at Exhibit O?

Mr. Subkow: Has your Honor a copy of Exhibit O?

(Testimony of Stanley Groner.)

The Court: I have seen it this morning. I don't have it [319] here.

Mr. Subkow: It might be confusing.

The Court: Maybe the clerk can hand it to me?

The Witness: Could we share it?

The Clerk: The witness has it.

The Court: Oh, yes. You go ahead.

Q. (By Mr. Subkow): Now, take a good look at Exhibit O, and take a good look at the upper left-hand picture.

The Court: I see it.

The Witness: Oh, excuse me.

Mr. Subkow: If you would like to use mine—

The Court: I can see it. Thank you.

Q. (By Mr. Subkow): Would you say in that upper left-hand picture that the lower part of the derrick that extends over the cab is wider or narrower than the cab?

A. From just looking at that picture, I couldn't tell.

Q. Notice the clear space between the derrick legs and the top of the cab.

A. It must be that white line there (indicating), yes.

Q. Would you say that picture shows a hinge between the derrick and the cab?

A. No, I don't see a hinge in this picture between the cab and the derrick.

Mr. Subkow: May I have a moment to consult with my [320] associate?

The Court: Yes.

(Testimony of Stanley Groner.)

Mr. Subkow: That is all, your Honor.

The Court: Gentlemen, it just occurred to me that there were certain answers to interrogatories that were submitted this morning. Did you intend that they be copied into the record?

Mr. Subkow: We were admitting them by reference.

The Court: I didn't know whether you intended them to be copied or not.

Mr. Subkow: They could be copied. I think it would be more convenient if they were copied in.

The Court: I don't remember anything being done either way, and I wondered if you overlooked it.

Mr. Subkow: I had thought we were just doing it by reference, but I think they ought to be copied in the record, and then they will be there, and there will be no question. I would prefer it that way.

The Court: It is sufficient either way.

Mr. Subkow: I know, but I think it would be more convenient if they were copied into the record.

The Court: Mr. Clerk, what are the exhibits?

The Clerk: I can give them to the reporter.

The Court: 102, 103, 104 and 105.

The Clerk: They are in the file. [321]

The Court: Do you wish the pretrial conference in there, too?

Mr. Subkow: Does that need to be copied into the record?

The Court: I should not think so, unless you want that.

(Testimony of Stanley Groner.)

Mr. Subkow: No, I think that could be there as a physical exhibit, and as a reference.

The Court: All right. Then you will provide those exhibits to the reporter and they will be copied in the record at the point where offered.

Mr. Subkow: Yes.

Redirect Examination

Q. (By Mr. Lyon): Now, if you were designing or building a portable drilling rig or servicing rig in accordance with your concept of what the Waldrip Engineering Company was here advertising in Exhibits M, N, P and Q, would you build it with two legs or four legs?

Mr. Subkow: I object, your Honor. This witness has been clearly qualified as not being an expert or even having any acquaintance with this art.

The Court: He is a mechanical engineer.

Mr. Subkow: Well, perhaps he ought to be asked whether he feels he would be competent to define such a thing. [322]

The Court: I assume you may inquire. It would go to the weight rather than the admissibility.

Mr. Subkow: Oh, indeed, yes, but I think it is a rather important qualification that has to be made.

The Court: He may answer.

The Witness: Would you repeat the question, please?

The Court: Please read it, Miss Reporter.

(The question was read.)

The Witness: Four legs.

(Testimony of Stanley Groner.)

Q. (By Mr. Lyon): When you first saw Exhibits M and N—

Mr. Subkow: Did your Honor sustain my objection or overrule it?

The Court: I overruled the objection—

Mr. Subkow: I am sorry.

The Court: —on the ground it would go to the weight rather than the admissibility.

Mr. Lyon: I have no further questions.

The Court: Do you wish to interrogate the witness further, Mr. Subkow?

Mr. Lyon: Just a minute.

Q. Have you ever seen a two-legged derrick?

A. No, sir, I have not.

Mr. Lyon: That is all.

The Court: Any recross examination? [323]

Recross Examination

Q. (By Mr. Subkow): You have had no acquaintance with oil field practice?

A. That's right.

Q. And you have never seen a telescopic double pole mast?

A. From your terminology, I don't believe I would say that I have.

Mr. Subkow: That is all.

Mr. Lyon: Are you finished?

Mr. Subkow: Yes.

The Court: You may step down.

Mr. Lyon: May this witness be excused to go back to his business?

(Testimony of Stanley Groner.)

The Court: Yes, he may.

Mr. Lyon: Thank you.

(Witness excused.)

The Court: We will take the afternoon recess at this time.

(A short recess.) [324]

JOHN FRANCIS PURDUM

a witness called on behalf of the defendants, having been previously sworn, resumed the stand and testified further as follows:

Mr. Subkow: Your Honor, I understand we are going over the same ground with this witness. In view of the argument that this witness, because he is an expert, is not as well qualified to testify as to what is present in these exhibits as would be an ordinary man skilled in the art, do we need any such testimony on this further?

Mr. Kenway: I was just about to say, your Honor, that Mr. Purdum has testified about two of these advertisements, and I think that would be enough. I didn't think it would be necessary to take up our time to have him go over the others. But Mr. Subkow is perfectly at liberty to cross examine on any of them.

The Court: Very well.

Direct Examination—(Continued)

Q. (By Mr. Kenway): Mr. Purdum, will you take the book of patents, Exhibit S, please, and will you turn to the first patent in the book, the Morton

(Testimony of John Francis Purdum.)

patent, No. 966,345, patented August 2, 1910, and will you refer to that patent, please, and tell the court what the apparatus is and how it operates and the [325] salient features of it—not every nut and bolt.

A. The patent in question is F. C. Morton, and the name of the apparatus is "Apparatus for Fighting Fires." Application was filed April 20, 1904.

This apparatus consists of a four-wheel vehicle on which is mounted a ladder that can be raised or lowered with a hydraulic means. This ladder is hinged at the front end of the vehicle. A driver's seat is located at the front end of the vehicle. There is an engine and a pump located at the rear of the vehicle. There are two outriggers located at the front end of the vehicle.

Q. Where do they appear, Mr. Purdum?

A. Pardon?

Q. Where do the outriggers appear?

A. They appear on Figure — pardon me. I am still looking at Figure 1 on the first page of the patent. And they are numbered there. The outrigger itself, I believe, we could call 281. It consists of an arm, at least, 281, with a screw 286—I believe that is the designation for the screw — that can be run down to contact the ground to take the load off of the front axle.

Now, this vehicle can also be adapted to carry a tower, an extension tower, that is also raised and lowered by hydraulic means.

Q. Is that what we see in Figure 10? [326]

(Testimony of John Francis Purdum.)

A. Yes. It is shown in several of the Figures, but better in Figure 10 than in some of the others.

Q. What kind of a tower is it?

A. This is a tower for carrying workmen, firemen, I should say. Also, it has several other features that—it is equipped with a hose not evident on this print, but in the description. And on the other prints there is a hose and a sheave for lowering injured persons. [327]

That I believe is the salient features of this machine.

Q. Now, referring to the hydraulic means you spoke of, would you identify that, say, in Figure 4, and explain how it works, and where the thrust is taken while it is operating?

A. Let's see. Figure 4. Figure 4 shows the method for raising the lower section. In fact, it raises all of the sections together of this tower. There is a hydraulic cylinder, and I believe that is 195. At any rate, the 195 is right above the hydraulic cylinder, and a piston, a cross arm 51 that exerts the power through 50 to this bracket, which is numbered 189 in the front of the truck. When the power is applied, the hydraulic pressure, then, at a point in the vicinity of 195,—this piston is pushed forward toward the front end of the vehicle, exerting a force on the plunger, which will rotate about the axis at pivot pin 47.

In this operation the thrust would be taken by the slide members 52, and there would be a horizontal and a vertical thrust along that slide.

(Testimony of John Francis Purdum.)

Q. And where is that with respect to the front and rear wheels?

A. Here (indicating). It is almost midway, but it is between the front and rear wheels.

Q. Referring to Figure 1 of that patent, you spoke of an engine. Would you point out just where that is, and what the [328] engine accomplishes?

A. You said "engine"?

Q. Yes.

A. The engine is 197 on the print in Figure 2, and that is at the rear of the truck in that little box-shaped affair (indicating). The cylinder 199 amidship in the vehicle contains compressed air. This 197 is a compressed air engine that runs the pump 198 to furnish the hydraulic power.

Q. And how is the vehicle propelled?

A. It says in the literature here that this particular one is moved with horses or some other convenient means.

Mr. Subkow: Is the witness reading from something upon which he has notes, or something of that kind?

The Witness: I have made some notes in the interests of time of this.

Mr. Subkow: May we inspect the notes?

Mr. Kenway: Certainly.

Mr. Subkow: And would the witness be so good as to refer to the section in the literature to which he has referred?

The Witness: I believe I can. I went through here. It is so hard to find some things sometimes

(Testimony of John Francis Purdum.)

that I made just some red marks. This would be in column 1, page 1, line 33 or 34,—33. [329]

Q. (By Mr. Kenway): Is it 33 or 23?

A. Excuse me. Yes, it is 22. I will start reading from line 20:

"For this purpose the working parts of the apparatus are carried by a vehicle which may be drawn by horses or otherwise propelled."

I believe that I answered your question.

Mr. Kenway: Yes. Would you like to inspect the copy of the patent?

Mr. Subkow: Not at this time.

Q. (By Mr. Kenway): Now, will you turn, please, to the last patent in the book, the patent to Evans, and will you please tell the court about the salient features of that patent?

A. This patent is N. P. Evans' patent. It was applied for December 9, 1943. The number of the patent is 2,488,180, and it is titled, "Mobile Hoisting and Conveying Apparatus."

This apparatus also consists of a four-wheel conveyance. It has an engine in the rear. In one instance in Figure 1 is shown—they call it a jib crane. It also has a hoist located between the front and rear wheels, a steering wheel, and a seat with a cab that can be placed over the driver if they wish.

Q. Now, what do you see in Figures 10 and 11?

A. In Figure 10 and Figure 11—Figure 11 being the [330] side view of the same apparatus—is shown this same conveyance, on which is mounted a hinged mast or frame at the front end of the vehicle.

(Testimony of John Francis Purdum.)

The frame is hinged at some distance above, that is, higher than the driver's position, and somewhat forward.

There is a support at the back end of the unit or conveyance that supports the top part of this frame or mast when it is lowered when it is being moved.

Q. Is that the piece 120?

A. The support member is numbered 120, yes.

Q. What does the reference character 119 indicate?

A. 119 refers to the hinge point that the upper section of the frame work is turned about.

Q. Would you now describe the member 110? What does that consist of?

A. Is that in the same—

Q. Yes, that is higher up.

A. Oh, 110 is the upper section of this four-legged framework.

Q. And what is the equipment used for?

A. It is mobile hoisting and conveying apparatus, and it is used for raising and moving loads of different kinds, and I presume on a platform, that this 111 could be run in underneath, but it is used to move—to raise and lower and to move the items.

Q. Does that complete your description as to the salient features of the Evans patent?

A. I believe that is all that could be of interest.

Q. Would you now turn to the second patent in the book, the patent to Downie, 1,096,022, and tell the court concerning the salient features of that patent.

(Testimony of John Francis Purdum.)

A. This patent is—well, there are several inventors here, and one of them is Robert M. Downie, and it is a well drilling machine.

The patent itself pertains to the shock absorbing features of a drilling machine of this nature. However, the drawing, Figure 1, shows some items of interest.

This also is a four-legged contraption with front wheels and rear wheels with a mast hinged at the front of the conveyance and with, in this instance, a steam engine located at the back of the conveyance with two hoisting drums between the wheels, and controls for operating the hoisting equipment located in the front, at the front corner of the machine.

The one thing of interest regarding this machine is that the same general type is still in use in drilling shallow wells and drilling wells in after rotary in several parts of the country. I saw one just the other day in operation.

Q. Mr. Lyon is holding an object. Would you tell us what that is, please?

A. This is a model of a well servicing—drilling and [332] servicing rig.

Q. Any particular apparatus?

A. Pardon?

Q. Does that represent any particular apparatus you know about?

A. Well, it is a particular kind of a rig, and it is fixed so that the engine designated by this part (indicating), and the driver's position as shown by

(Testimony of John Francis Purdum.)

this section, can be put on either end of the chassis, that has wheels and has a derrick. The rams, hydraulic rams, are not functional due to the expense involved in making them functional, but they indicate more or less the position of the rams when the derrick is raised, and also when it is in the horizontal position.

The Court: Is that a miniature of some device that is known, or was that just made up for some purpose of demonstration?

The Witness: By changing the position of the hinge point here, it can be assembled very quickly into what will show either the drive-in type of unit or the back-in type of unit. That was the reason it was made in this way, so that we could easily see just what was involved in the exchange of the of the parts.

The Court: There is one hydraulic ram on either side. Is that taken from some device? [333]

The Witness: Well, there could be but one, but there are two hydraulic rams on many of the units that are made of this type.

Q. (By Mr. Kenway): And who made the model, Mr. Purdum?

A. I made the model. Maybe I should apologize for it a little.

Mr. Kenway: I will offer in evidence the model identified by the witness as Defendants' Exhibit X, and I should explain that the model is not offered as accurately representing any particular unit. It was just constructed to show the various parts and

(Testimony of John Francis Purdum.)

their relationship as a demonstrator. We are not trying to prove anything by it except what the witness has testified to. But, frankly.—

The Court: Is it illustrative of the witness' testimony?

Mr. Kenway: To a certain extent, yes. Frankly, we had in mind that it might be helpful to your Honor to see that operated, but in view of the large number of photographs and the discussion and the testimony, I think it is superfluous from that standpoint, but I would like to have it in the record, if your Honor please. [334]

The Court: Well, it might be helpful to see it operate. I don't know. Is it a model of the accused device, or is it a model of the device taught by the patent in suit?

Mr. Kenway: No. I think it would be fair to characterize it as a model which in one condition is reasonably representative of the back-in type that have been discussed, and which when rearranged it can be made either to illustrate the subject matter of the claims of the patent in suit or the structure as manufactured by the defendant.

Mr. Subkow: I take it that it is sort of a non-verbal argument then.

Mr. Kenway: Yes, in a sense.

Mr. Subkow: In that case it's not evidence.

The Court: It shows what can be done if you take all the elements and mix them up a bit? Is that it?

Mr. Kenway: Yes. It's in support of the issue

(Testimony of John Francis Purdum.)

in the pretrial order that what we have involved in the patent suit is merely a reversal of old parts.

The Court: Any objection to it?

Mr. Subkow: If it goes in merely as a non-verbal argument. But it's not evidence, as I view it.

The Court: Very well. It will be received as Defendants' Exhibit A. [335]

(The exhibit referred to, marked Defendants' A, was received in evidence.)

Mr. Kenway: I would be glad to have the witness demonstrate it, your Honor. I just didn't want to pour on any more—

The Court: That might be helpful.

Mr. Kenway: Will you set it up, Mr. Purdum?

The Court: Can the witness depict it to where it operates in accordance with the teachings of the patent in suit and then point out—is there a replica or anything here showing the accused device so that I can compare it to that?

Mr. Lyon: Do you need anything else, any tools?

The Witness: No, I don't believe I need a thing. I am sorry that this is a little bit low.

The Court: I don't want the Government to give you a claim for damaging the furniture here. Do you need some newspapers?

Mr. Kenway: That would be good.

The Witness: I don't believe I am scratching anything. I believe it's all right.

(Whereupon papers were placed beneath the exhibit.)

The Witness: Now, I'm placing the driver in the

(Testimony of John Francis Purdum.)

hinge point more or less—well, I believe I should move him out just a little. Now, that hinge point is, as near as I can tell, directly above the steering wheel. The engine now is in the back of the truck.

Now, we will raise the mast. The legs straddle the driver in the driver's position. The driver is—well, I guess you could say that at least the bottom of the steering wheel is slightly above the front axle. The derrick is sloped forward a little.

And if your Honor will disregard this brace. I wanted to put it in there. It shouldn't be there. And it interferes with the wire line.

And I might state that this derrick is sloping forward a little more than it would if it were higher. There's a certain amount of clearance required in here, and you can get that same amount of clearance with a tall derrick without having it slanted so much forward.

The Court: This is a replica now of what device?

The Witness: This is, I think, a very good representation of the patent that the suit is about.

The Court: Except that the patent teaches only one hydraulic ram and this teaches two, is that it?

The Witness: Well, I think, if I am not mistaken I believe that it says in the patent two hydraulic rams, one on either side.

The Court: I may be in error.

Mr. Subkow: There are two hydraulic rams, your Honor.

The Court: The Figure shows only one.

(Testimony of John Francis Purdum.)

Mr. Subkow: Figure 1. Figure 10 shows the two.

The Court: Very well.

The Witness: Now, if you will notice—

The Court: As now erected does this fairly depict the patent in suit?

Mr. Subkow: Indeed not. It is ridiculous.

Q. (By Mr. Kenway): Now, Mr. Purdum, would you make whatever arrangements or rearrangements you feel are necessary to represent the defendants' units, drive-in units which you have seen?

The Court: Can you identify them by some way, Clipper so and so? Or what model it is?

The Witness: Yes, sir, I can identify—and if you will pardon me just one second, I'll put the hinge point out, move the driver back and erect the derrick again.

Mr. Subkow: Your Honor, I apologize. I withdraw the term "ridiculous."

The Court: Do you want to substitute another adjective?

Mr. Subkow: None at all, your Honor.

The Witness: Now, this is the Clipper unit—very close.

The Court: The defendants unit, is that it?

The Witness: Yes, sir.

The Court: All right. Now, tell me in some well chosen words the difference between it and the plaintiffs' unit.

The Witness: The difference, in my interpretation is [338] that the hinge point is now no longer above the driver.

(Testimony of John Francis Purdum.)

The Court: It's in front of the driver.

The Witness: It's to the extreme front end of the unit. As shown here, these legs do extend down here. But in the unit that is manufactured by Cabot Shops the legs don't come down here. They terminate in a brace coming out to the front legs on both sides.

Mr. Kenway: Will you show his Honor what you mean by that?

The Witness: This is the particular unit—

The Court: "This" being what exhibit?

Mr. Kenway: That's going to be an exhibit of ours, but he offered it. That's the '57 catalog.

Mr. Subkow: May we not show his Honor an exhibit which shows the derrick in erect position. I offer you the exhibits that we have.

The Court: Exhibits which?

Mr. Subkow: 93, 94 and 95.

The Court: The drawings we were discussing yesterday about the forces?

Mr. Subkow: Yes.

The Witness: Is it clear so far, sir?

The Court: Does the defendants' device have that outrigger support?

The Witness: Yes. It has the outrigger support.

The Court: Is that on the rear leg?

The Witness: The outrigger support—actually there are no rear legs on the defendants' machine. But they do come from somewhere in the vicinity of the hinge point.

The Court: Are you suggesting that the legs

(Testimony of John Francis Purdum.)

closest to the cab are supported by the top of the cab alone?

The Witness: No, sir. I didn't want to put some permanent members in here. But in the defendants' unit there is cross members and a very substantial brace actually in front of the cab.

The Court: Well, how does it reach the ground, through the chassis?

The Witness: No, sir. The load is transferred to the front legs, what little load there is, at this point here.

The Court: By a cross-brace.

The Witness: By a diagonal brace, yes, sir. In fact, in construction there are diagonal braces in each section.

The Court: Of the defendants'?

The Witness: Yes, sir. And of most of the others that I have seen, to transfer the load to the front leg that takes most of the load.

The Court: Does the patent in suit teach that?

The Witness: I think there is nothing said about it, no, sir.

Mr. Subkow: I can't hear what is being said, your Honor. [340]

Mr. Kenway: I show you a photograph which will be identified—

The Court: Do you wish some of it read back?

Mr. Subkow: I have lost the last three or four questions.

May I have them, your Honor?

The Court: Please read it, Mr. Reporter.

(Testimony of John Francis Purdum.)

(Record read.)

Q. (By Mr. Kenway): I show you two photographs, one of which is identified and will be offered as Defendants' F, and the other will be offered as Defendants' Exhibit AB. And I ask whether—

The Court: Perhaps we can stipulate and get them in evidence, now. There are three photographs, A, B and F. Have you seen them?

Mr. Subkow: I haven't seen them.

The Court: They are all exhibits of the Moon deposition, apparently.

Mr. Kenway: No, sir. F was—

Mr. Subkow: Well, if I can look at them.

The Court: I am looking at the defendants' exhibit list. It says that A is Exhibit 1 in the deposition, and B is Exhibit 2.

Mr. Kenway: I said AB. This is our Exhibit AB.

The Court: I am sorry. [341]

Mr. Kenway: And that was not in the Moon deposition. However, photograph F was Exhibit 6 in the Moon deposition—attached as Exhibit F.

The Court: Very well.

Mr. Subkow: No objection to Exhibit F.

The Court: Very well. Exhibit F is received in evidence.

(The exhibit referred to marked Defendants' Exhibit F, was received in evidence.)

The Court: Exhibit AB, is it stipulated that that photograph fairly depicts what it purports to depict, the Franks accused unit, "Slide-A-Cab Forward," according to defendants' list.

(Testimony of John Francis Purdum.)

Mr. Subkow: No objection.

The Court: Is that AB?

Mr. Kenway: AB, your Honor.

The Court: Received in evidence.

(The exhibit referred to, marked Defendants' Exhibit AB, was received in evidence.)

[See Book of Exhibits.]

Q. (By Mr. Kenway): Do these two photographs demonstrate the bracing at the front of the Franks unit? A. Yes.

Mr. Subkow: Objection on the ground that it's indefinite. There are several different types of Franks units. May it be further clarified as to whether it applies to all of [342] them or only some of them?

The Witness: It applies particularly to the Clipper unit that I saw in the yard here in California just the other day.

Mr. Subkow: There are four different kinds of Clipper units, your Honor.

The Witness: It was a Senior Clipper 65.

The Court: Is that the accused device?

Mr. Subkow: There are four different units that are accused: the Midget Clipper, Senior Clipper, Super Senior Clipper and the Giant Clipper, all of which are in the evidence which your Honor hasn't seen.

The Court: The witness now says, as I understand it, that the photograph AB depicts the Senior Clipper. Is that correct?

(Testimony of John Francis Purdum.)

The Witness: Yes, sir. Showing the outrigger or side brace that you asked about, your Honor.

The Court: Very well.

Mr. Clerk, do you have them?

(Whereupon the exhibits were handed to the court.)

The Court: I assume these cross braces do not —or lateral braces do not obstruct the driver's view.

The Witness: Well, I think they do.

The Court: My assumption is erroneous. It looks to me from looking at the photograph as if they do, but — [343]

The Witness: Well, I think they do. Obviously there is some obstruction by the two or three members that are at the side and the front of the cab.

The Court: That is, this outrigging equipment.

The Witness: Well, that and the cross bracing that supports the pivot. And if you will, your Honor, right up at the top is shown the pivot point on one side, on the near side of the derrick.

The Court: That's the hinge.

The Witness: That's the hinge or pivot point. And the brace that comes down at an angle just behind that headlight is one of the supporting members; and the diagonal braces that come into a center point in about the middle of the cab are other braces that are built in front of the cab to support the derrick.

Mr. Kenway: Since I propose to have the witness change the model to a different condition, perhaps it would be proper to have Mr. Subkow ask

(Testimony of John Francis Purdum.)

any questions he may wish to about the model as he sees it now.

Mr. Subkow: I prefer that the direct examination be completed, and then I will cross examine.

Mr. Kenway: Very well.

Q. (By Mr. Kenway): Mr. Purdum, can you now rearrange the model, demonstrating a back-in unit? And will you please say, as you do so, what changes you are making? [344]

A. In order to make this represent a back-in unit I will just take the driver's position and the engine and interchange them. I will put the driver now somewhere in what was the rear of the—we will make that the front. The engine then will be on this end.

That is a back-in unit. And I might call attention to the fact that in this particular instance the engine is also in the back. If it were a semi-trailer the driver would be up in front and also the engine would be in front, with the power unit possibly amidship driving the hoist.

The Court: By the "power unit" are you referring to the engine?

The Witness: Yes, sir. I am sorry. But there are instances when more than one engine is used on all of these machines. In other words, when they are being used for a drilling machine as a rotary rig, then you must have a pump and an engine, also, in addition to this equipment to circulate the drilling fluid. And I am in the habit of talking about the power unit. But I mean the engine. In this case it

(Testimony of John Francis Purdum.)

would be the engine that drives the hoist, as well as the engine that drives the conveyance from one location to the other. [345]

Q. But in respect to that engine, Mr. Purdum, in the rig as you have it there now, if it is not a trailer rig in the back-in types with which you are familiar, where would the engine be for driving the truck?

A. If it were a back-in type, the engine would be in front with the driver, that is, it would be more or less of a conventional cab and engine, designed just like the front end of a large truck.

Your Honor, did you—

The Court: You will have to speak up so that the reporter can hear you.

The Witness: I am not sure that I answered your question about the outrigger. If I didn't, I would be happy to.

The Court: Yes, I think you have.

Q. (By Mr. Kenway): I asked you previously some questions about publications that appeared in 1947. Since Mr. Subkow has graciously waived your qualifications, I didn't get into it, but in 1947 had you had any experience with this sort of equipment?

A. Yes, I had had at least 15 years experience with oil field type of equipment, in not only the design, but also in research, finding out what equipment should do, and, among the other things that I worked on was a hoisting equipment, derricks, portable masts, and items that we are talking about here. In fact, I was with Stanolind for three [346]

(Testimony of John Francis Purdum.)

years. I organized their equipment engineering department, and for that length of time there was very little equipment purchased where I didn't look over the specifications, and in many cases had certain things done to it before we could use it satisfactorily.

Q. What, if any, relationship do you have to the defendant, Cabot Shops?

A. None at all. I am a consulting engineer and offer my services in the areas that I feel specially qualified.

Mr. Subkow: We raise no question of bias or interest. There has been no showing that any of the testimony given in this courtroom has not been truthful.

The Court: Very well.

Mr. Kenway: Thank you, Mr. Subkow. No further questions.

Mr. Subkow: Just a moment. Just leave the exhibits there, please, Mr. Purdum.

The Witness: Let me move it forward, though.

Mr. Subkow: We will relieve Mr. Crowley.

The Witness: That is what I had in mind.

Mr. Crowley: Thank you, Mr. Subkow.

Mr. Subkow: Shall I proceed, your Honor?

The Court: Yes. [347]

Cross Examination

Q. (By Mr. Subkow): Mr. Purdum, viewing the model in the aspect in which it is at present, as a petroleum engineer and with your experience in

(Testimony of John Francis Purdum.)

the oil field business, would you say that the arrangement as it is shown there would be one which would be tolerated in the oil fields?

The Court: As a back-in unit?

Mr. Subkow: In the orientation which he has it, with the driver in front and with the engine in back positioned adjacent the derrick.

The Court: The so-called back-in model?

Mr. Subkow: Which he has called the back-in model.

The Witness: I would say that there would be one very undesirable feature if the equipment were made in this manner, which I mentioned before, and normally the engine would be up with the driver in the front end of the truck on a back-in unit. But if this were a gasoline engine, or an engine that did have a spark of some kind, a magneto, it would be quite undesirable.

Q. (By Mr. Subkow): It is a fire hazard, isn't it? A. Yes.

The Court: The question is, as between the man with the drive-in, and the man who had this one, the man who had it with the back-in, who would get the business— [348]

The Witness: Well, I think—

The Court: —with the same rates and the same service, who would get the business?

The Witness: I think that I would have to qualify that, your Honor, and answer that in this way: With the engine up in front where the driver is, and where he would normally be, then it is prob-

(Testimony of John Francis Purdum.)

lematical. I wouldn't know which one. I know that they are both in service. I have seen them both in service recently, and I think probably there would be some other consideration.

Mr. Subkow: Your Honor, we have a witness here that we would like to put on out of order, who also has other business. It is a short examination. I wondered if we could interrupt the testimony, the cross examination of Mr. Purdum.

Mr. Kenway: Oh, yes, as far as I am concerned.

The Court: You may.

The Witness: I believe I had better lay this down.

Mr. Subkow: Yes. We will resume at the point where we left off here.

The Court: As I understand your last answer, it is that so long as the engine is adjacent the well, why, either device would function equally well; is that it?

The Witness: Yes, sir, in that there would be either friendship, or some difference in price, or something else [349] that would govern the selection of the equipment.

(Witness temporarily excused.)

Mr. Subkow: I will call Mr. Smyser. I don't know whether this is rebuttal, in view of the way that the case has come in, perhaps it may be a re-opening of the direct. We will see as the testimony goes in, if your Honor believes it should be one or the other.

The Court: Then suppose we call it a reopening of the case in chief.

Mr. Subkow: Yes, your Honor.

CLIFFORD SMYSER

called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your full name?

The Witness: Clifford Smyser, S-m-y-s-e-r.

The Clerk: Thank you.

Direct Examination

Q. (By Mr. Subkow): Mr. Smyser, will you tell us what your occupation is?

A. I am a general partner of the Best Well Service. We are located in Fillmore.

Q. What sort of service do you offer? [350]

A. We do oil well servicing, and water well servicing, and remedial work, and we once drilled an oil well.

The Court: You don't do that any more?

The Witness: No.

The Court: You just clean them out after other people drill them; is that it?

The Witness: Yes, that's right.

Q. (By Mr. Subkow): How long have you been in that business? A. Three years.

Q. What sort of units do you operate?

A. We have two self-propelled drive-in units. One Ideco and one Wagner-Morehouse.

(Testimony of Clifford Smyser.)

Mr. Subkow: May I have the Ideco and the Wagner-Morehouse catalogs, please?

The Court: Those are both, as I recall the record now, built by licensees of the patentee?

Mr. Subkow: Yes, sir.

The Court: Of the patent in suit?

Mr. Subkow: Yes. Exhibit 51 is the Ideco unit, and the Wagner-Morehouse is Exhibit 53.

Q. Are these units shown in their catalogs, and I now hand you the catalogs?

The Court: Exhibits—

Mr. Subkow: 51 and 53. [351]

The Court: Can you direct the witness to the page?

Mr. Subkow: May I approach the witness?

The Court: Yes, you may.

Mr. Subkow: I call your attention to page 2711 of Exhibit 51.

The Court: That is Ideco?

Mr. Subkow: The Ideco, and page 5309 of Exhibit 53, the Wagner-Morehouse.

Q. Are they similar to those two types?

A. Yes, these are essentially our two rigs.

The Court: I didn't get the page number of the Wagner-Morehouse.

Mr. Subkow: The Wagner-Morehouse is at page 5309.

The Court: Of Exhibit 53?

Mr. Subkow: Yes.

The Court: I have it now. Thank you.

Q. (By Mr. Subkow): Prior to your going

(Testimony of Clifford Smyser.)

into the business of servicing wells with the Wagner-Morehouse and Ideco rigs, what other business did you have?

A. I was a salesman for Ideco for ten years prior to that.

Q. And at that time what were you selling?

A. I was selling Ideco rigs of all sorts; drilling rigs, well servicing rigs, and other equipment.

Q. That included back-in Ideco units? [352]

A. Yes.

Q. There are two types of Ideco units sold of the back-in type, are there not?

A. There are several types that have been sold.

Q. Do they sell the truck-mounted unit?

A. Yes, they do.

Q. Do they sell the trailer-mounted unit?

A. Yes, sir.

Q. Would you tell the court the difference between a truck-mounted unit and a trailer-mounted unit?

A. Well, the difference is—well, there are many differences.

Mr. Subkow: The question is highly indefinite, and I withdraw it.

Q. Will you turn to page 2709, and will you identify the kind of a back-in unit, that is, as to whether that is a truck-mounted or a trailer-mounted rig?

The Court: You are referring to Exhibit 51?

Mr. Subkow: Exhibit 51, page 2709, the left-hand structure.

(Testimony of Clifford Smyser.)

The Witness: This is a truck-mounted back-in unit.

Mr. Subkow: It is mounted on the truck which carries the power and the mast together on the truck?

The Witness: Yes, that's right.

The Court: That is called a truck Rambler; is that it? [253]

Mr. Subkow: His Honor asked whether it is called a truck Rambler rig.

The Witness: Yes, it is.

Q. (By Mr. Subkow): Now, I call your attention to page 2713 of the same Exhibit 51, and ask you to identify the structure shown on the right-hand photograph.

The Court: At the top?

Mr. Subkow: At the top.

The Witness: Well, this a trailer-mounted—half of a mast—a trailer and a mast and the sub-structure part of a dual trailer rig. I don't think that would even enter into this. This is not a Rambler rig.

Q. (By Mr. Subkow): But it is a back-in?

A. This does not happen to be a back-in.

Q. Well, can you find a back-in unit in the exhibit?

A. Yes. I am not entirely familiar with this one here.

Mr. Subkow: Let me have the Hopper catalog.

The Court: A back-in with a trailer?

(Testimony of Clifford Smyser.)

Mr. Subkow: A truck and trailer one. Perhaps my associates will help me.

The Court: Does that make any difference? It is just a question of being able to separate the power unit from the rear end, isn't it?

Mr. Subkow: That is right. Your Honor obviously—well, [354] here is one of the Hopper Machine Company.

Q. I show you Exhibit 47, and refer you to page 2369, the lower view. I withdraw that. Here is another one: The Wagner-Morehouse catalog, Exhibit 53, which your Honor has, at page 5311, the lower figure, can you identify what that represents, and are you familiar with that structure?

A. Yes, that is a semi-trailer-mounted well servicing rig. [355]

Q. On that structure there is a separate truck portion with its own motive power, and then on the trailer there is the winch and its own motive power for raising the derrick, is that correct?

A. Yes, that is correct.

The Court: In other words, with one of those you could take the truck, or tractor part, the motive power unit and drive it away from the well and use it for something else and leave the mast and derrick at the well.

Mr. Subkow: On 5310 there is an illustration of just that situation.

The Court: Yes. I see it. With the derrick in place.

Mr. Subkow: With the derrick in place.

(Testimony of Clifford Smyser.)

Q. (By Mr. Subkow): Now, you have sold units of the back-in truck and trailer type and of the truck type in the past? A. Yes, I have.

Q. Have you had any experience with those, or have you observed them being used and driven into the location, and employed?

A. Yes, many times.

Q. Can you tell the court how the truck-type unit is backed in and what, if there are any, problems, what there are, and then if you will——

A. Well, it would depend entirely upon the location [356] in which the oil well was located. Sometimes they are in very difficult locations, and it's extremely hard to back a unit in.

I observed the General Petroleum putting one of their semi back-in units into a location in Bakersfield.

Q. You mean semi-trailer?

A. Yes. Semi-trailer mounted unit. And it took them an hour and a half, and they had to tear down a section of fence in order to get into it, because they just simply couldn't negotiate the turns handily. It was just very difficult to do.

In the first place, most of the men that drive these units are not truck drivers. They are oil field trained men, and the handling of vehicles is more or less secondary with them. They do learn it and sometimes become quite skillful, but they are not generally as handy with them as truck drivers.

(Testimony of Clifford Smyser.)

Q. When did you first hear of the Moon drive-in, Waldrip drive-in structure?

A. Well, I don't remember exactly when the first time was. But I know I saw the first one that came in the field within three days after it was in there. I didn't see it in the shop being built. But I saw it shortly thereafter with a delegation of Ideco engineers.

Q. To your knowledge, do you know whether this unit caused any interest in the field? [357]

A. Yes, it did. It caused a great deal of interest. And Ideco went through several preliminary surveys and spent a considerable amount of money deciding whether or not we should build a unit of that type. And I was against it, because I was selling so many back-in semi-trailer units, which we already had designed, and we had it to a point where we were making some money on it. And I didn't think that the drive-in unit would be as easy to get onto a location as would be a semi because you can jack-knife a semi-trailer into a location, and that should make it easier.

I changed my mind later on.

Q. I was going to ask you why you chose a drive-in unit when you went into business yourself.

A. Well, it's like many things. We have an opinion one time and then we change it. And I admit that I was wrong, and very wrong, as a matter of fact.

Q. How do you make out in competition with back-in units in the business?

(Testimony of Clifford Smyser.)

A. They can't compete with us. We have revolutionized the business in the area where we are located, which is the toughest in California. You fellows—people——

The Court: Where is that?

The Witness: Fillmore.

The Court: Fillmore?

The Witness: We operate within 50 miles of Fillmore. [358]

The Court: What fields would that be?

The Witness: Well, South Mountain, West Mountain, Torrey Mountain—the Ventura area. It's all in the mountains—very rough terrain; narrow roads and roads that have been built with bulldozers.

Q. (By Mr. Subkow): Do you have any trouble getting up there to the location?

A. No, we have no trouble, generally speaking. We can move into Torrey Mountain in an hour, and formerly it was taking at least two and a half hours, because they had to have a helper tractor to get up Torrey Mountain.

Q. What kind of a rig are you talking about?

A. With a back-in semi-trailer rig. It's the only kind they could use in that area. They couldn't use a truck-mounted rig on the deeper wells.

Q. They had to have an extra truck?

A. They had to have extra help to get the rig up the hill, where we drive to it handily. There is no problem whatever.

(Testimony of Clifford Smyser.)

As a matter of fact, we can outrun—most times we can outrun trucks going up the hill. We have to make sure that the road is clear ahead because we don't like to stop those rigs.

Q. Once you get on the location how fast can you spot your drive-in? [359]

A. Well, consistently we will put the rig on the location in 20 minutes' time; sometimes we can do it faster.

Q. Do you have any interest or connection with the plaintiffs in this lawsuit? A. No.

Mr. Subkow: That is all, your Honor.

The Court: Any cross examination?

Cross Examination

Q. (By Mr. Kenway): Your experience is limited to the California fields?

A. I have been in other fields on observation trips with Ideco; never having worked there, however.

Mr. Kenway: That is all.

Mr. Subkow: That is all, your Honor.

The Court: You may step down.

(Witness excused.)

Mr. Subkow: I wonder, your Honor, if we couldn't end the session now and resume tomorrow morning?

The Court: Yes.

When do you estimate the defendant will conclude his presentation of evidence?

Mr. Kenway: I think in about half an hour after we get started.

Mr. Subkow: We should be finished in the morning. [360]

The Court: Do you wish to resume at 9:30 or 10:00 o'clock.

Mr. Kenway: We are at your convenience, your Honor.

Mr. Subkow: Would 10:00 o'clock be adequate?

The Court: Suppose we say 10:00 o'clock. If we have a prospect of finishing—

Mr. Subkow: Well, certainly tomorrow should end it.

The Court: Very well. The trial will be recessed until 10:00 o'clock tomorrow morning.

(Whereupon, a recess was taken until 10:00 o'clock a.m. of the following day, Friday, March 28, 1958.) [361]

Friday, March 28, 1958, 10:00 a.m.

The Court: Are you ready to proceed in the case on trial, gentlemen?

Mr. Subkow: Yes, your Honor, ready for the plaintiff.

Your Honor, there are a few formal matters dealing with the exhibits that we wish to take up and clarify the record.

We have now found a photograph, Exhibit 12, and we wish the photograph replaced for the print that has been in the record, and that the markings on the print be transferred to the photograph.

The Court: We will leave that to the clerk?

Mr. Subkow: If the clerk may do so, or we will do it for the clerk.

The Court: Suppose you do it for the clerk, and when you have completed it, the substitution will be made.

Mr. Subkow: Yes. We have found the confusion in Exhibit 88. 88 in the record originally was a photograph. We have in our Woody exhibit list another Exhibit 88.

I wish to have the exhibit originally marked 88 and introduced into the record earlier in the proceedings remarked as Exhibit 106, and that all further references to 88 be read as 106.

The Court: Is that agreed to? [365]

Mr. Kenway: Yes, your Honor.

The Court: So ordered.

Mr. Subkow: This is now 106.

The Court: Exhibit 106?

Mr. Subkow: Yes, that is now 106.

The Court: 106 is a photograph, is it?

Mr. Subkow: Yes, sir. Your Honor, we find in going through the record that Exhibit 57, which is the reduced print, is the exact photograph with numbers quite small because of the reduction. We have remarked a like exhibit with larger numbers, so that they are legible. We would like either to introduce this as Exhibit 57-A, or substitute it for Exhibit 57, so that it can be read.

The Court: Is there any objection to the substitution?

Mr. Kenway: No, your Honor.

The Court: So ordered.

Mr. Subkow: Now, your Honor, in the pretrial conference order and in the answers to the interrogatories, and the deposition of Mr. Moon, there is a reference to a drive-in pole type unit. Without the exhibit, the description is a little vague.

We wish to introduce in evidence a Cooper catalog, 1957 catalog, which shows on page 39-D in the upper right-hand corner—will you hand that to his Honor—the drive-in pole type unit which is referred to, and it is marked, "Used [366] since 1918."

The Court: Any objection?

Mr. Kenway: I have no objection, but I think that for the sake of order it may be said that is the unit which Mr. Moon was speaking of on page 10 of his deposition.

Mr. Subkow: If that is the page, yes.

The Court: You wish this marked as an exhibit, do you?

Mr. Subkow: As Exhibit 107, your Honor.

The Court: It may be so marked and received in evidence.

(The document referred to was marked Plaintiffs' Exhibit 107, and received in evidence.)

Mr. Kenway: I believe Mr. Purdum was under cross examination.

Mr. Subkow: That is right.

JOHN FRANCIS PURDUM

recalled as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Subkow): Mr. Purdom, will you take up Exhibits M and N? Have you them before you

A. I don't happen to have them here.

(The documents referred to were placed before the witness.) [367]

Mr. Subkow: And will the clerk please hand them to his Honor?

The Witness: I have them now, yes.

Mr. Subkow: Has your Honor a copy of the exhibits?

The Clerk: The witness has the original exhibits.

Mr. Subkow: Then, your Honor, perhaps you will use mine.

(Thereupon a set of exhibits was handed to the court.)

Mr. Subkow: May I look at them? They are very poor reproductions. I think these two are better (handing documents to the court).

The Court: Very well. You may return those to Mr. Lyon. [368]

Q. (By Mr. Subkow): Mr. Purdom, you stated in your evidence that you read the drawing to show two hoist drums, isn't that correct?

A. Yes, sir.

Q. Is that because you believe that one need not

(Testimony of John Francis Purdum.)

be told that there is a hoist drum in a vehicle since it is a portable servicing rig?

A. I don't believe I understood you, Mr. Subkow.

Q. Do you answer in that way because you believe that one need not be told that there is a hoist drum in the vehicle since it is a portable servicing rig?

A. Well, not necessarily. There have been many servicing rigs made with one drum.

Q. Well, you would think there would be at least one drum, anyhow.

A. Well, there must be a drum if it is going to be a servicing rig.

Q. You also say that the derrick is of welded construction. What in the drawing shows it to be of welded construction?

A. Well, there are no gusset plates shown so that it could be bolted together. And that is the principal reason that I interpret it to be welded.

Q. Do you read it that way because you know from the prior art that such constructions are welded? [369]

A. Well, I will have to admit that I have never seen a portable mast that was completely bolted together of this construction; but it could be bolted together. But I think it was welded.

Q. Because that is the way they are made in the prior art, isn't it, sir?

A. Yes. I think some of them—in fact, I think all of them are welded.

(Testimony of John Francis Purdum.)

Q. Now, you state that you see a hinge and that the vertical black line that runs up the side of the cab is the support for the hinge. Is that correct?

A. Well, I am not sure just exactly how I worded that, but I don't know definitely that the vertical black line is the support but if I remember what I said, I said that there must be a support underneath that pivot point, as the structure of the cab alone would be insufficient to carry that tremendous weight.

Q. Therefore, you draw your conclusion that it must be a support from your knowledge of the prior art that in order to hinge the derrick you must supply a hinge support, is that right?

A. Well, I don't know that it's from the prior art. It's just because I know that you have to support any sort of a structure if you are going to keep it in a fixed position. [370]

Q. That's the knowledge you bring to this reading of this drawing from your past experience with structures of hinged derricks, is that correct?

A. My past experience enables me to interpret this drawing in that manner.

Q. Is your testimony that the derrick is hinged dependent upon your reading of the drawing that the lower end of the derrick is wider than the transverse extent of the cab?

A. I was just testifying from the drawing alone, and I wasn't looking at the description matter at the time.

(Testimony of John Francis Purdum.)

Mr. Subkow: Will you read my question to the witness, please?

(Question read.)

The Witness: The answer would be no.

Q. (By Mr. Subkow): What is it based upon?

A. It's based upon the construction as shown in this drawing.

Q. Will you tell us what construction in the drawing permits you to read that the derrick is hinged?

A. I can see light through at every point excepting right below the point that I indicated as the hinge.

Q. Would that be consistent also with a structure there to merely support the derrick so it can just rest on it?

A. Well, yes, conceivably it could be. But with the [371] rotating member as shown where it is there is no other place for this structure to pivot.

Q. What rotating member, when you say—

A. The hydraulic ram that I testified to that is hinged at the bottom of the chassis, or near the bottom of the chassis, and also on the leg of the derrick.

Q. Therefore, I understand your testimony to be that you have read a hinge into the structure because you see something that you interpret to be a hydraulic jack which pivots at the lower end of the jack and thus would rotate the derrick around a hinge? A. Yes.

Q. So that you have had to read into the struc-

(Testimony of John Francis Purdum.)

ture—you would have to read into the structure elements, that is structural elements to complete that function? In other words, you will have to say, "Well, that jack, in order to rotate it about the hinge, has to be extended down and be pivoted at the lower end"?

A. That is correct; just the same as it must have an engine and at least one drum in order to function as a well-servicing rig.

Q. And you would come to that conclusion because you have seen other such structures used in the prior art for the rotation of hinged derricks, is that right?

A. Well, it's sure that I have seen that method used [372] in rotating hinged derricks prior. And that may be a factor, drawing on my experience, that that would be the way it would be constructed.

Q. Now, Mr. Purdum, don't you think it's a fair statement that, taking that drawing and reading it, you have read into it not only what there is in it but what your experience and knowledge with the prior art would supply to that drawing to supplement what is not there?

A. I believe it would be a little difficult to separate the knowledge that one has from, on from the other. I imagine that I did draw on some of the things that I know to be mechanical expedients and ordinarily used in machine design.

The Court: If you had seen this when it was first published, is it your belief that your testimony would be the same as it is today?

(Testimony of John Francis Purdum.)

The Witness: Yes, sir, I believe so, because I had been selecting equipment—in fact, most of my experience, or a lot of it, had to do with analyzing the equipment that different companies put out for certain purposes in order for me to recommend whether we could use that equipment for what we had in mind. And I am sure that I would have read the drawing in the same manner—well, at any time.

Mr. Subkow: That is all, your Honor.

Just a minute, your Honor. That is all on those exhibits. [373]

The Court: Have you finished with Mr. Purdum?

Mr. Subkow: No. I have a couple more things to ask. May I collect my thoughts?

The Court: Yes.

Mr. Subkow: In order to refresh the witness' recollection in connection with that model, I will read the end of the examination at the time we terminated at the last session, and we can pick up at that point. I believe that was when interrupted to put on Mr. Groner. [374]

Q. (By Mr. Subkow): At the end of the cross examination of the witness, and before we interrupted it to put Mr. Smyser on, you will recall we were discussing the model in the posture that it is now before you, and I asked you:

"Mr. Purdum, viewing the model in the aspect in which it is at present, as a petroleum engineer and with your experience in the oil field business, would say that the arrangement as it is shown there would

(Testimony of John Francis Purdum.)

be one which would be tolerated in the oil fields?"'

And the court stated, "As a back-in unit?"'

And I continued, "In the orientation which he has it, with the driver in front and with the engine in back positioned adjacent the derrick."

And the court said, "The so-called back-in model?"'

And I continued, "Which he has called the back-in model."

And then you answered, "I would say that there would be one very undesirable feature if the equipment were made in this manner, which I mentioned before, and normally the engine would be up with the driver in the front end of the truck on a back-in unit. But if this were a gasoline engine, or an engine that did have a spark of some kind, a magneto, it would be quite undesirable."

You recall that testimony? [375]

A. Yes, that is correct.

Q. Now, the court then asked you the question: "as between the man with the drive-in, and the man who had this one, the man who had it with the back-in, who would get the business?"'

Mr. Subkow: Now, we were talking about this construction, I believe, am I correct, your Honor? The construction in the posture in which he has it?

The Court: Yes, as between the two devices, and otherwise the same.

Mr. Subkow: Your Honor, as is shown with the cab in front and the engine in the back?

The Court: As I understand it, the witness

(Testimony of John Francis Purdum.)

stated that if the engine of the back-in were in front, away from the well, it would not matter.

The Witness: That is what I intended to say, and I believe in there I put that modification in. Didn't I, Mr. Subkow?

Q. (By Mr. Subkow): So you didn't intend to imply, then, that the conversion of this unit by taking the cab from the front and putting it in another place, and then interchanging things so as to put the cab in the back had any material relationship to the issues in this case, then?

A. Well, yes, it does have.

Mr. Kenway: I object, your Honor. [376]

The Witness: Oh, pardon me.

Mr. Kenway: That is asking for a legal conclusion.

The Court: Sustained. As I understand the witness, the only disadvantage, as he sees it, to a back-in over a drive-in, so-called, is if the engine is in the rear of the back-in, it would create a fire hazard at the well, but that normally, as I understand it, he would say that in the back-in units the motive power is up where the driver is, and not back.

Mr. Subkow: I think your Honor has this thing clearly in mind, and I will discontinue with it.

The Court: Any redirect?

Mr. Subkow: Just a moment.

The Court: Oh, I am sorry.

Mr. Subkow: I have some notes here I would like to look at.

Q. Now, Mr. Purdum, you didn't intend this

(Testimony of John Francis Purdum.)

model to illustrate a structure which had any utility as a portable servicing oil well rig?

A. You mean something that could actually work?

Q. It doesn't really represent, and it doesn't have the structural features that are necessary in a unit of this kind to serve as a drilling and servicing rig? It is merely—

A. It is a model that I think has the features as shown in the back-in units and in the front-in units that this [377] case is about, but I mentioned, for instance, the rams. They are long, and they are non-operative, but to indicate just the fact that the derrick was raised with a hydraulic lift mechanism.

Then the little block here is not one suitable for actual work, because it is from an awning, but I thought it looked pretty good, and pretty well represented what was in the drawings or the pictures of a traveling block in a unit.

I think the features are here, although the construction,—as I also mentioned, the derrick is only in one piece. The cost of making a two-piece derrick, and of handling it is quite out of proportion to the value.

I thought with this model, although I admit it isn't very pretty, but it does have the features that I thought were being talked about.

Q. Do I understand that the answer to my question is "Yes"? A. Would you please—

The Court: With that explanation of it?

(Testimony of John Francis Purdum.)

The Witness: I might be able to say yes, if I could have the question again.

Mr. Subkow: Please read the question.

The Court: You also mentioned that the model, as I recall, omits the cross braces? [378]

The Witness: Yes, sir. And, in addition, your Honor, I have a screw here that has no function at all, only to slide the derrick legs at this pivot point here. I can run them up and down, and that isn't in a derrick in use.

So I would say that this is not a functional miniature well servicing derrick.

Mr. Subkow: Will you read the question to the witness again, Miss Reporter? He wishes to see whether he can answer "Yes."

(The question referred to was read by the reporter as follows: "Q. It doesn't really represent, and it doesn't have the structural features that are necessary in a unit of this kind to serve as a drilling and servicing rig? It is merely——")

Q. (By Mr. Subkow): Omitting "It is merely," is the answer to the question "Yes" or "No"?

A. Structural features,—now, I take that to mean if it would actually hold up a certain load. I would say that that is a "Yes," qualified to the extent that there is no guy wires shown, and it would surely have to be guyed, and the rear legs here do not touch the ground, and they would have to—for stability in raising and lowering the der-

(Testimony of John Francis Purdum.)

rick, there would need to be something done in that area. So I would say the answer was "Yes." [379]

Q. Mr. Purdum, are you telling the court that you would design and construct a servicing rig in which the derrick is positioned on the hinge support, on the roof of the member there, without any cross members or supporting structures to support it?

A. His Honor asked me about that, and I specified before that I didn't want to put some permanent members in the front portion, and that they wouldn't need to be there.

Q. Then you were imagining that they would be there, weren't you?

A. I constructed the model here so that I could move the pivot point back and forth, and so I could place the driver's position as shown and described in the patent in question, directly above the driver's position, so I could move it out in front of the cab.

I made the top of the unit strong enough in this model so that it adequately supports the structure that I have it supporting at the moment. The cab is not the structure. This (indicating) is the cab, or a representation of it with the man inside.

Q. All right. Put it in front, Mr. Purdum, and is that the way you can see it in relationship?

A. It is just a little cramped here.

Q. Now, Mr. Purdum, with that thing there, will you please listen to the question and see whether you can answer [380] it "Yes" or "No."

(Testimony of John Francis Purdum.)

(The question referred to was read as follows: "Q. Mr. Purdum, are you telling the court that you would design and construct a servicing rig in which the derrick is positioned on the hinge support, on the roof of the member there, without any cross members or supporting structure to support it?"")

A. The answer is "No," that I would have—that when I design a structure, I design into it the adequate supports to the points—

Q. Therefore, there would have to be cross bracing to run from the hinge point down to the chassis, wouldn't there? You are imagining that?

A. Well, I think it is—I really don't understand your question, Mr. Subkow.

Q. What confuses you, Mr. Purdum? I am asking you whether or not you omitted these strut and supporting structures merely for simplification, and that you would understand that they would be there?

A. I omitted them so that I could slide the cabin in and out to comply with both of the patents that had been mentioned at that time.

Mr. Subkow: Mr. Purdum, I don't want to argue with you, but I think I am entitled to an answer to the question.

The Court: Hasn't he answered it? He has answered it [381] to my satisfaction.

Mr. Subkow: Has he? All right.

The Court: I don't know how else he could answer it.

(Testimony of John Francis Purdum.)

Mr. Subkow: Then I will assume the answer by my next question.

Q. With such supporting structures present, could the wheels be turned? Could you drive the structure, would you say?

The Court: Which supporting structure, now?

Mr. Subkow: That is the difficulty, your Honor. I didn't get the answer to my question. If the answer to my question had come in——

The Court: He told me he built the member to where the rear legs are supported by the wheels of the vehicle. [382]

Mr. Subkow: Well, he just said he wouldn't design a structure of that kind and that he imagined the structure to be there and he omitted it because he wanted to slide the cab.

The Court: Why don't you put another question. I think we understand it.

Mr. Subkow: The purpose of this examination is so that the court would understand it. If it does, I don't want to pursue it.

The Court: Well, I take it that this is a rough model. It isn't accurate in detail. And pages have been consumed here saying wherein it isn't accurate in detail.

You wouldn't question that, would you?

The Witness: No, sir.

Mr. Subkow: That satisfies me.

The Witness: And I might further state from the evidence here, that is from looking at the model

(Testimony of John Francis Purdum.)

I think you will agree that I am not a model maker.
But it does have the features—

Mr. Subkow: Mr. Purdum, I think it's a pretty
model.

The Court: You wouldn't expect anyone to copy
it, would you?

The Witness: No. We will have no infringement
suit on this here.

The Court: You brought it here without fear
that anyone [383] would make another one like it?

The Witness: Yes.

Mr. Subkow: And I don't think that it will sell
as a toy, Mr. Purdum, really.

The Court: Any redirect examination?

Mr. Kenway: No, your Honor.

The Court: You may step down, Mr. Purdum.

The Witness: Thank you, sir.

Shall I move this?

Mr. Kenway: We are through with the model.

The Court: You may leave it there.

The Witness: I believe I will lay it down just in
case someone would bump against it.

(Witness excused.)

Mr. Kenway: I will call Mr. Woody.

WAYLAND B. WOODY

called as a witness on behalf of the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your full name, please?

The Witness: Wayland B. Woody.

Direct Examination

Q. (By Mr. Kenway): Mr. Woody, how are you employed? [384] A. Pardon?

Q. What is your employment? What is your job?

A. I am at present chief development engineer for Cabot Shops.

Q. In connection with that work have you come into contact with portable well servicing equipment? A. For 20 some years.

Q. And you were formerly vice-president of Franks Manufacturing Company?

A. That is correct.

Q. What were your duties at Franks Manufacturing Company?

A. My principal duties were the design and development of oil field equipment of all the types that we manufactured.

Q. Have you figures available to show for 1956 the breakdown on sales of the different types of portable servicing and drilling equipment which the company manufactures? A. I do have.

Q. Have you them with you right now?

A. By memory. I can quote them, I think.

(Testimony of Wayland B. Woody.)

Q. All right. Would you tell us, please, those figures?

A. In 1956 we produced a total of 120 units, of which 84 were truck-mounted units with pole masts; 32 were truck-mounted units with derricks, and the remainder was of the [385] drive-in type or, I think maybe there was a special skid unit or unit of other type. At any rate, of the total production of 120 units, there was 84 plus 32, which would be 116, that were truck-mounted back-in units.

The Court: With derricks on them?

The Witness: 84 of them had pole masts.

The Court: What is a pole mast for?

The Witness: A pole mast performs the same function as a derrick.

The Court: Used with oil wells?

The Witness: To service oil wells. It performs the same function in a little different way, and it is less expensive in initial cost. And since a great deal of the remedial work in the oil fields since the war is done by private contractors, there has been a trend toward lower original investment.

The Court: Where are these manufactured?

The Witness: They were manufactured in Tulsa, Oklahoma up until last September. And the manufacturing operation has been transferred to Pampa, Texas.

Q. (By Mr. Kenway): Would you look at Exhibit 54, please?

(Whereupon the exhibit was placed before the witness.)

(Testimony of Wayland B. Woody.)

Q. (By Mr. Kenway): By referring to the pages of the catalog you have, would you tell the court, going through somewhat rapidly, beginning at page 1883 what kind of a unit [386] that is?

A. That is a drive-in unit.

Q. And on the next page?

A. That's another type of drive-in unit.

Q. And on the next page?

A. That is a drive-in unit.

Q. Now, turn to page 1889.

A. That's a back-in unit. It's a truck mounted unit with a derrick or mast on it.

Q. And on the next two pages there are—

A. Similar.

Q. Then, if you will turn, please, to page 1900.

A. That is a back-in unit with a pole mast on it.

Q. And the next several pages show similar types? A. The same.

The Court: What is the difference in price between the unit with the pole mast and one with the derrick, approximately?

The Witness: I couldn't give you exact figures, but I would say that the best way to express it would be in percentage, and that the difference might run as much as 25 per cent more.

The Court: What is this Giant Clipper, what does it sell for, about? I don't care to have it to the penny. I am not going to buy one. I just want to know. [387]

The Witness: Oh, with full equipment it will run possibly as much as \$90,000.

(Testimony of Wayland B. Woody.)

The Court: And the cheapest one would run—

The Witness: Of the normal size of these pole mast units they will run around \$30,000.

Q. (By Mr. Kenway): Now, the figures you have given us are for 1956. I am correct, am I not, in assuming you do not have yet complete figures for 1957? A. That is correct.

Q. But without going there into specific figures, could you tell the court whether your sales experience during 1957 differed materially from the ratio of sales of the different units from what it was in 1956?

A. There is no significant change. There doubtless will be, in the final analysis, changes in the ratio of the various units. But that exists from year to year, even though there is no over-all trend.

Q. How about 1955?

A. '55 was probably very nearly the same.

Mr. Kenway: Your witness.

Mr. Subkow: No cross examination.

The Court: You may step down, Mr. Woody.

(Witness excused.)

The Court: Your next witness?

Mr. Kenway: That concludes my witnesses. But I do [388] have some exhibits to put in, your Honor.

The Court: Very well. Do you wish to take a recess while you organize them?

Mr. Kenway: I don't think it will take me that long, sir.

All right. Why don't we then. Five minutes would be sufficient.

(Short recess.)

Mr. Kenway: May it please the court, we do not intend to offer Exhibits A and B on our list because they have already been put in as plaintiffs' exhibits.

The Court: What exhibit numbers are they?

Mr. Kenway: Our Exhibit A was the patent in suit, which is Plaintiffs' Exhibit 1. Our Exhibit B was the 1957 Franks catalog, which is Plaintiffs' Exhibit 54.

The Court: Very well. Are you going to offer Exhibit C?

Mr. Kenway: I am offering Exhibits C, D and E, which are three photographs which were exhibits at the deposition of Mr. Moon.

The Court: Any objection?

Mr. Subkow: No objection to those.

The Court: Received in evidence.

(The exhibits referred to, marked Defendants' Exhibits C, D and E, were received in evidence.) [389]

Mr. Kenway: Exhibits F, G and H are already in evidence.

I am not offering Exhibit I, the Waldrip Wild Catter, since that is also an exhibit of the plaintiff, Exhibit No. 41.

I do offer in evidence Exhibit J, the Wilson catalog, which was Exhibit 10 at the deposition of Mr. Moon.

Mr. Subkow: We never have been able to obtain

a copy of that catalog. You promised to supply me with one and I haven't anything to work with on it. Is there any chance of my being able to see that?

Mr. Kenway: The only one we have is that one. Perhaps I can explain its purpose, the purpose for which it is offered. That was offered merely to show that pole mast units are still currently being sold. That is the single purpose for which it was offered. [390]

Mr. Subkow: To avoid the necessity of the exhibit, we will stipulate that pole mast units are still being made.

Mr. Kenway: In that event, I will withdraw Exhibit J.

The Court: According to Mr. Woody, they are very much being sold. Then Exhibit J is not offered?

Mr. Kenway: No. Our Exhibit K was Exhibit 11 to the deposition of Mr. Moon, and that is the McEwen patent, and since that is also incorporated in our Exhibit T-1, I will not offer it again.

The Court: Very well.

Mr. Kenway: Our Exhibit L was Exhibit 12 to the Moon deposition, and that was one of the license agreements which has been offered in evidence by the plaintiffs, and I can't say which one it was, because the name of the licensee was removed.

Mr. Subkow: On what issue is that exhibit being offered?

Mr. Kenway: I am not offering it.

Mr. Subkow: Oh, I am sorry.

The Court: Is it in evidence as a plaintiffs' exhibit?

Mr. Kenway: It is. They introduced several license agreements.

Mr. Subkow: No, these were not introduced.

The Court: I didn't recall any.

Mr. Kenway: Oh, thank you. In that case I do offer Exhibit L, which was Exhibit 12 in the Moon deposition. [391]

Mr. Subkow: And I ask upon what issue is it being offered?

Mr. Kenway: That shows the background on which this litigation is standing.

Mr. Subkow: I still ask to what issue is it being directed?

The Court: There was testimony in your case in chief that certain licenses are extant in this matter.

Mr. Subkow: And this is to show what that license is?

Mr. Kenway: Yes.

Mr. Subkow: I withdraw the objection.

The Court: Very well. Exhibit L is received in evidence.

(The exhibit heretofore marked Defendants' Exhibit L was received in evidence.)

The Court: That covers everything down to V, does it not?

Mr. Kenway: Yes, sir.

Mr. Subkow: Your Honor, may we have this understanding, that the introduction of that exhibit raises no issues not specified in the pretrial conference order?

The Court: That is the exhibit—

Mr. Subkow: L.

The Court: —L, the license agreement?

Mr. Subkow: Yes. [392]

Mr. Kenway: That is agreeable.

The Court: Very well.

Mr. Kenway: I am not offering Exhibit V.

The Court: W?

Mr. Kenway: W is now in evidence, your Honor, as an exhibit of the plaintiffs. That was Exhibit 33 in the deposition of Mr. Woody, and has been offered as Plaintiffs' Exhibit 35.

The Court: Very well. Exhibit X is the model, and that is in evidence.

Mr. Kenway: Yes, sir. I offer in evidence the photograph, Exhibit Y.

The Court: Any objection?

Mr. Subkow: May I see it? We have a number of photographs which are not identified by number. Can somebody tell me what it is?

The Court: It says, "Franks Pole Mast Unit."

Mr. Kenway: I believe it is on the rear side of those, Mr. Subkow.

Mr. Subkow: I have got his list.

The Court: It is listed as a photograph.

Mr. Subkow: Yes, I have it. Now, what is the offer?

The Court: It is offered in evidence.

Mr. Subkow: As showing what?

Mr. Kenway: Oh, it shows six pole mast units, I believe. [393]

Mr. Subkow: Yes, but what materiality has it?

When were these pole mast units constructed, and when was the photograph taken?

Mr. Kenway: That, again, is simply offered to show that pole mast units are still apparently being sold.

Mr. Subkow: Then we need no such exhibit, because we have stipulated to that.

The Court: It is here, and it might help someone to visualize it, unless there is some prejudice.

Mr. Subkow: No, I can't see any prejudice. Maybe I am mistaken, but I don't see any.

The Court: Received in evidence as Exhibit Y.

(The exhibit heretofore marked Defendant's Exhibit Y was received in evidence.)

Mr. Kenway: I will not offer Exhibit Z, but I shall offer in evidence Exhibit AA as a photograph of one of the defendants' current units.

Mr. Subkow: May we have a stipulation that this photograph shows the Franks drive-in unit with the derrick erected and extended?

Mr. Kenway: Certainly.

The Court: Received in evidence as Exhibit AA.

(The exhibit heretofore marked Defendants' Exhibit AA was received in evidence.) [394]

The Court: AB is already in evidence, according to my notes.

Mr. Kenway: Yes, sir, and I will offer at this time Exhibit AC, which is a photograph showing one of the defendants' units with the derrick erected, and specifically showing the framework at the lower end of the derrick in relation to the front end of the unit.

Mr. Subkow: Just a minute. AC?

Mr. Kenway: Yes.

Mr. Subkow: I have no such exhibit. I have no such photograph. May I hear that offer?

The Court: It is offered in evidence.

Mr. Subkow: As showing something.

The Court: As showing, according to the defendants' list, and you can read it, the Franks accused unit, the side of the cab forward.

Mr. Subkow: There was some additional statement Mr. Kenway made to further explain the exhibit, and may it be read to me, your Honor?

The Court: Yes, sir.

(The statement referred to was read.)

Mr. Subkow: No objection.

The Court: Received in evidence. [395]

(The exhibit heretofore marked Defendants' Exhibit AC was received in evidence.)

Mr. Kenway: I shall not offer Exhibits AD or AE, but I do offer in evidence Exhibit AF, which is a photograph of the forward end of one of the defendants' units with the derrick erected.

Mr. Subkow: Is that AF or FF?

Mr. Kenway: Well, FF became AF. That is the new notation.

Mr. Subkow: No objection.

The Court: Received in evidence.

(The exhibit heretofore marked Defendants' Exhibit AF was received in evidence.)

Mr. Kenway: Now, I offer in evidence Exhibit AG, which is a photograph of one of the defendants' units with the derrick partially erected.

The Court: Any objection?

Mr. Subkow: May we have this unit identified by reference to the trade designation, so that we may know?

Mr. Kenway: That is a Clipper.

Mr. Woody: That is the unit illustrated on page 1884 of the 1957 catalog, substantially the same model.

The Court: What is that exhibit?

Mr. Woody: Exhibit 54.

The Court: What do you call the unit?

Mr. Woody: It is a Senior Clipper, I believe, the present designation. In here it is designated as the Super [396] Senior Clipper.

The Court: Any objection to the offer?

Mr. Subkow: No objection.

The Court: Received in evidence.

(The exhibit heretofore marked Defendants' Exhibit AG was received in evidence.)

Mr. Kenway: Now, I offer in evidence Defendants' Exhibit AH, which is a photograph of one of the defendants' units bogged down at the side of the road.

You don't have a copy of that, Mr. Subkow, and neither do I.

The Court: Any objection? It is bogged down at the side of the road. You won't object to that, will you?

Mr. Subkow: Not a bogged down unit.

The Court: Received in evidence.

(The exhibit heretofore marked Defendants' Exhibit AH was received in evidence.)

Mr. Kenway: I shall not offer in evidence Exhibits AI or AJ.

The Court: Does that conclude the list?

Mr. Kenway: Yes, sir. The defense rests.

The Court: Any rebuttal?

Mr. Subkow: Yes, your Honor. We would like to call Mr. Hopper to the stand.

The Court: Recalled? [397]

Mr. Subkow: No, sir. This is in rebuttal.

The Court: But he is recalled. He has been called once before.

Mr. Subkow: Yes, but not for the plaintiffs, your Honor. He was called by the defendants.

The Court: Very well.

The Clerk: He was sworn, though.

Mr. Subkow: He was sworn, yes, sir.

FRANK A. HOPPER, JR.

called as a witness by the plaintiffs in rebuttal, having been previously duly sworn, testified further as follows:

The Clerk: Will you state your name for the record?

The Witness: Frank A. Hopper, Jr.

The Court: And you have heretofore been sworn, Mr. Hopper?

The Witness: Yes.

Direct Examination

Q. (By Mr. Subkow): Your catalog has been introduced in evidence in this lawsuit as Exhibit 47, and I hand you the catalog, and ask you to

(Testimony of Frank A. Hopper, Jr.)

turn to page 2367, and this illustrates the drive-in unit manufactured and sold by your company; is that correct? A. Yes, sir. [398]

Q. How long have you been manufacturing that drive-in unit?

A. As my memory serves me, since about 1952.

Mr. Subkow: Your Honor, may I look at that catalog over the shoulder of the witness?

The Court: You may have this one.

(The document was handed to counsel.)

Mr. Subkow: Thank you, your Honor.

The Court: How much do they sell for, Mr. Hopper, about?

The Witness: Well, it varies. Really, there are four basic models, your Honor, and we will take the smallest to the largest. The smallest sells around to forty to forty-five, and the largest for a little over one hundred thousand.

Q. (By Mr. Subkow): Now, Mr. Hopper, you also manufacture back-in units. Will you turn to page 2369, and the lower type is the trailer-mounted unit, is that correct, and the upper type the G-hoist? A. Yes, sir.

Q. You also sell such units mounted on trucks?

A. Yes, this Figure 2 is a typical truck-mounted unit.

Q. That is a pole mast. Do you have one with a derrick mounted on it? Do you sell them with a derrick mounted on it?

A. Yes. I think there is one designated here some place. [399]

(Testimony of Frank A. Hopper, Jr.)

Q. I think you will find one at page 2363.

A. That's right. Figure 6 on page 2363 is a truck-mounted unit with a derrick, which is a short derrick, and handles singles.

Q. Now, you also have these derricks mounted on skids, do you not?

A. Skid-mounted units, yes.

Q. Do you have any shown there?

A. No, I don't think it is depicted in the catalog.

Q. Will you tell his Honor what a skid-mounted unit is?

A. Well, a skid-mounted unit, in essence, is a rig with no method of transportation as a part of the unit. You pick it up with a truck crane, and load it on a semi-trailer, and handle your transportation in that manner.

The Court: And skid it into position; is that it?

The Witness: That's right. That is where the term came from.

Q. (By Mr. Subkow): Now, can you state the relative percentages of drive-in units to the back-in units of the truck type, and the back-in units of the trailer-mounted type and skid type that you sell in California?

A. Well, the drive-in type in California probably accounts for, roughly, 80 per cent of our business in California. [400]

Q. And taking it over the whole country, what would be the ratio of the sales of your drive-in type to all the three different types we are talking about?

(Testimony of Frank A. Hopper, Jr.)

A. I would estimate that within the last two fiscal years, it is about 50 per cent. In other words, about 50 per cent of what we sell is in this drive-in category, and the balance is in truck-mounted and semi-trailer and miscellaneous type units.

Mr. Subkow: Thank you. That is all. [401]

The Court: Do you attribute the popularity of the drive-in model to the convenience of the driver in locating the derrick, spotting the derrick?

The Witness: Well, that is a factor. You go a little deeper into it, your Honor. The cost of labor in California is higher than it is, generally we'll say, in the mid-continent area; and as a result, the purchasers of equipment can and do spend more money for what we loosely term as "gadgets" and basic labor-saving devices.

The Court: Is the drive-in a labor-saving device over the back-in, appreciably?

The Witness: It's a little faster getting in and out of location.

The Court: More versatile, shall we say?

The Witness: Well, it's not more versatile. It is easier to handle because—

The Court: It saves time?

The Witness: It saves time, and it is more simple for a truck driver or a well driver functioning as a truck driver to handle a piece of machinery that consists of one unit rather than two, in the case of semi-trailer mounted equipment.

The Court: And it doesn't require as much skill

(Testimony of Frank A. Hopper, Jr.)
to drive it in forward as it does to back it up to
the location, is that it? [402]

The Witness: That's right.

The Court: Anything further of this witness?

Mr. Kenway: No. Thank you.

The Court: You may step down, Mr. Hopper.
(Witness excused.)

Mr. Subkow: I would like to recall Mr. Moon
for one or two questions.

The Court: Is there any occasion to require the
further attendance of Mr. Hopper? If not, he is
excused.

Mr. Subkow: As far as I am concerned he may
be excused.

The Court: Very well.

Mr. Subkow: Mr. Moon, would you take the
stand, please?

CLEON JAMES MOON

a witness called on behalf of the plaintiffs in re-
buttal, having been previously sworn, testified as
follows:

The Court: You are the plaintiff and you have
been sworn?

The Witness: That's correct.

The Clerk: State your name for the record,
please.

The Witness: James Moon.

Direct Examination

Q. (By Mr. Subkow): Mr. Moon, you were
present at the taking of the [403] deposition of

(Testimony of Cleon James Moon.)

Mr. Woody and heard the testimony there given, were you not? A. Yes, sir.

Q. You have read the Woody deposition, and have you studied the exhibits which form part of the Woody deposition? A. Yes.

Q. Have you inspected the actual Franks drive-in units?

A. Yes. I have inspected at least three separate models of them.

The Court: Can you identify those by their trade name?

The Witness: Yes. I saw the very first one in California, which I believe they call their Giant. And I saw the Senior that Terminal Drilling has.

And I saw another one at the Oil Show in Tulsa. And I believe that unit was a Super Senior. I could be mistaken about that, but I believe that was the model.

The Court: The Clipper series?

The Witness: That is the Clipper series.

Q. (By Mr. Subkow): Now, you have also studied the exhibits, the charts that we have here, Exhibits 93, I think, and 94 and 95. As a matter of fact, you testified with regard to one of them.

Yes, Exhibits 93, 94 and 95.

A. Yes. I have studied those charts, and I worked in conjunction with Mr. Wagner in supervising the draftsman that [404] prepared the charts.

Q. Are they a fair representation of the structure of the Clippers that you have seen?

(Testimony of Cleon James Moon.)

A. In a structural sense, yes. And in a general sense, yes.

Q. With that information before you, will you compare the structure of the Clipper units with the structure disclosed in your patent?

A. They are substantially the same structure, producing the same result in substantially the same way.

Mr. Subkow: That is all, your Honor.

Mr. Kenway: No questions.

The Court: No questions?

Mr. Kenway: No, your Honor.

The Court: Very well. You may step down, Mr. Moon.

(Witness excused.)

The Court: Any further rebuttal?

Mr. Subkow: We have one witness on the patents that were experted by the defendants. May I inquire whether in presenting only these three patents the defendants withdraw all the other patents that were offered in that book S?

The Court: You mean Exhibit S.

Mr. Subkow: Yes.

Mr. Kenway: No. They are in the record, and we feel free to comment on them if we wish to.

The Court: The three, as I understand it, that were adverted to are their best foot forward.

Mr. Subkow: I see. Well, I would like to have a witness on the stand to explain the patents a little more fully than they have been, your Honor.

The Court: Very well.

Mr. Subkow: Mr. Bayliss, will you take the stand, please?

May I borrow an Evans patent?

The Court: You will be using Exhibit S?

BENJAMIN PHILIP BAYLISS

called as a witness on behalf of the plaintiffs in rebuttal, being first sworn, was examined and testified as follows:

The Court: Mr. Clerk, before you swear a witness, wait until everyone in the courtroom is giving attention. Don't swear a witness while other things are going on.

The Clerk: Thank you, your Honor.

Mr. Subkow: Has your Honor a copy of that patent before him?

The Court: No. Is that in Exhibit S?

Mr. Subkow: Exhibit S.

The Court: May I see Exhibit S, a book of prior patents, Mr. Clerk?

(Whereupon the exhibit was given to the court.) [406]

Direct Examination

Q. (By Mr. Subkow): Mr. Bayliss, you have studied the Morton patent, 966,345?

A. Yes, sir.

Q. Will you tell the court what the—will you turn to Figure 10?

Mr. Subkow: Your Honor, forgive me. I overlooked qualification of the witness. I am getting a little tired, I am afraid.

(Testimony of Benjamin Philip Bayliss.)

Q. (By Mr. Subkow): Mr. Bayliss, will you tell us your education and experience?

A. Well, I am a mechanical engineering graduate of Ohio State University; following which I went to work for Shell Oil Company in their mechanical engineering division. And my work in that connection involved the—I was assigned to the drilling department of Shell, during the early period when Shell was emphasizing the design of the light weight 100 per cent portable rotary drilling equipment. And in that connection I worked for two and a half years, part of this time in the Franks Manufacturing plant in Tulsa, observing the design and manufacture of the first one of these portable rigs.

Then after a period in the war I came to California and went to work for the Western Oil Tool & Engineering Co. [407] under Mr. Moon and Mr. Wagner, which later became the engineering department of the Waldrip Engineering Company in Hollydale. There we worked on the design of portable self-propelled drilling and servicing rigs and pumping units, oil well pumping units.

Following that I became employed by the Lloyd Corporation of Beverly Hills, an oil well drilling and producing company. And I am in their employ at the present time.

Q. Now, let us revert to the patent. Let us look at Figure 10—

The Court: Of the Morton patent?

(Testimony of Benjamin Philip Bayliss.)

Q. (By Mr. Subkow): ——of the Morton patent, 966,345.

Will you tell us where the structure which extends upward at an angle is hinged to the remaining structure?

A. The structure is hinged along what would be called the chassis, the front end of the chassis of this fire-fighting vehicle. And on a horizontal level with that chassis.

It's an unnumbered pivot or hinge point, and shown in a dashed manner—dotted.

Q. Is it shown anywhere else in the figure?

A. Not in Figure 10.

Q. In any other figure?

A. Oh, yes. It is shown in Figure 2, also dashed. And having read the specification I know that the hinge pin is numbered 48, although it isn't numbered on Figure 2. [408]

Q. Is it numbered up any other place?

A. Yes. Figure 24 calls out the hinge, in the lower right-hand portion of 24, Figure 24, and the hinge assembly is Nos. 47 and 48.

Q. Where does the driver sit?

A. Referring to Figure 2, the driver sits above the hinge in the front, on top of the front part of the vehicle at No. 400 on Figure 2.

Q. Now——

A. His position—may I go on?

Q. Yes.

A. The driver's position is described on page

(Testimony of Benjamin Philip Bayliss.)

9 of the specifications, column 1, commencing about line 58. I will read from that.

"The platforms 80 are made movable on the ladders to enable them to be moved back so as to clear the driver's seat 400 and not interfere with the driver. The driver's seat 400 and footboard are rigidly attached to the extensible support and move down in front of the vehicle when the said support is elevated."

Q. The structure which rotates the ladder, or whatever it is that extends at an angle in Figure 10, is caused by what sort of an element?

A. Well, there is provided in this apparatus an air [409] receiver 199.

Q. Where is that?

A. The hydraulic ram 195, which in turn is below the so-called chassis of this apparatus.

That air receiver works to actuate a hydraulic—an air pump which motivates the hydraulic motor, which moves a piston in the cylinder 195 to thereby erect the derrick assembly by means of an interconnected strut 50.

Q. The strut being connected to what?

A. The strut at its upper end is connected to a gusset 29 shown in Figure 2, allowing the derrick to rotate on its hinge pin 48.

Q. And the lower end of the strut 50?

A. The lower end of the strut 50 is connected to the hydraulic cylinder 195.

Q. What does 51 show?

A. On Figure 2?

(Testimony of Benjamin Philip Bayliss.)

Q. On Figure 4.

A. Oh, that's the slidable assembly. [410]

Q. So that do I understand that the hydraulic cylinder pushes the cross head 51 to the right through the guide way 52, and thus rotates the structure around the hinge pin 40?

A. Yes, except that it pushes it to the left in that view in Figure 2 to rotate it.

Q. I was looking at Figure 4. I am sorry. In Figure 4 it shows it?

A. In Figure 4 it is reversed, so it pushes it to the right, that is correct.

Q. Now, is this structure, except for the fact that this cross head 51, moves this connecting hydraulic cylinder, similar to any structure with which you are familiar in connection with your back-in units?

A. Yes, I would say that it is similar to the Franks screw type raising mechanism, in that it has the cross head and slidable pin.

Q. Would a structure of that kind be adaptable for use in a drive-in unit, such as illustrated in the Moon patent?

A. No, it couldn't be adapted to the drive-in type for the same reason that the screw type raising mechanism couldn't, and that was the lack of space at the front end of the unit. That is what caused us in the Moon design at Waldrip to change from a screw type mechanism, and use instead an extendable hydraulic jack. [411]

Q. Now, turning to the Downie patent, that is

(Testimony of Benjamin Philip Bayliss.)
1,096,022—the second patent in the book, your Honor—can you tell me whether this is a self-propelled unit with an engine which drives the wheels mounted on the structure?

A. There is no motive power built into this unit, no means of moving it by its own power.

Q. There is no driver's position, is there?

A. There is no driver, and no driver's position.

Q. What kind of a derrick structure does it have? Does it have a four-legged derrick?

A. As shown in Figure 1, and also in Figures 4 and 6, the derrick structure consists of two legs, and these are referred to as No. 13 in both Figure 1, Figure 4 and Figure 6.

Q. Now, will you turn to the Evans patent, Mr. Bayliss.

A. May I make one comment on this Downie patent?

Q. Certainly.

A. That if it were to be converted by any means into a powered drive-in unit, there would be no room to place the driver in his position, and the motive power and the derrick erecting mechanism in the front of the vehicle, because all of that space at present is used up by the spudding drive mechanism, as shown in all the detail in the front end of Figure 1.

The Court: You mean that boiler? [412]

The Witness: No, the other end, sir. It would have to be placed there—you see, here is the well head (indicating), if it were a drive-in unit.

(Testimony of Benjamin Philip Bayliss.)

The Court: Oh, for a drive-in unit?

The Witness: Yes, if it were a drive-in unit, this would all have to be removed.

Mr. Subkow: Is that all, your Honor? Does your Honor want to ask any more?

The Court: No, that is all I have.

Q. (By Mr. Subkow): Now, turn to the Evans patent, please.

A. I don't have a copy of the Evans patent.

Q. No. 2,488,180. I will give you the book so kindly loaned us by the defendants, and it is the last patent in the book.

(The book was handed to the witness.)

The Court: The last patent in Exhibit S, isn't it?

Mr. Subkow: Yes, your Honor. May I have a moment, your Honor?

The Court: Yes.

Q. (By Mr. Subkow): Will you turn in the Evans patent to Figure 1, or, turn to Figure 10, and will you state where the driver's position is with respect to the front or the rear of the vehicle?

A. Well, this vehicle has a very short wheelbase, [413] and the driver's position appears to be central, almost immediately between the front and rear wheels.

The Court: Is that his seat at 14?

The Witness: 14 is the seat, and 16 is his steering apparatus, so he occupies most of the space between the wheels.

Q. (By Mr. Subkow): What is this device?

(Testimony of Benjamin Philip Bayliss.)

A. I think the common term for it is a fork lift truck. It is called "Mobile Hoisting and Conveying Apparatus" in this.

Mr. Subkow: Your Honor is fully familiar with a fork lift truck, I am sure.

The Court: Is that the type of thing that they use down at the docks and in warehouses?

The Witness: Yes, sir, that is correct, and it picks up on a slat various loads and moves them from one position to another.

The Court: I think they use them around the airports, too, don't they?

The Witness: They do.

Q. (By Mr. Subkow): Where is the hoist position?

A. The hoist is in the front of the—oh, the hoist. The hoisting reel No. 35 is positioned below and in front of the driver's position.

Q. Now, is there any mechanism for erecting the— [414] I will withdraw that.

You will notice that the dotted position of the mast, in that it is hinged around 19,—you see that?

A. Yes, sir.

Q. How is that lifted up and erected?

A. I believe that is 119, isn't it?

Q. 119. I am sorry.

A. That is done manually, since in the specification there is no provision made for erecting it by any mechanical means.

Q. These are very light equipment, are they not?

(Testimony of Benjamin Philip Bayliss.)

A. Yes, that is light enough to be pushed up and down by hand, although it is bigger than the wooden model that was up here.

Q. I must apologize for this question. Could such a structure be used for any oil well servicing operation around an oil well?

A. No, this unit is designed for an entirely different function, and could not be so used without completely changing its character.

Mr. Subkow: That is all, your Honor, with this witness.

Mr. Kenway: No cross examination.

The Court: You may step down, Mr. Bayliss, and you are excused.

(Witness excused.) [415]

The Court: Any further rebuttal?

Mr. Subkow: I believe that closes it. It is very close to 12:00 o'clock and could I think about it over the noon hour? It will be very short.

The Court: We have already marked your list of exhibits as Exhibit 99, have we?

Mr. Subkow: Yes, your Honor.

The Court: Have we marked the defendants' list of exhibits as an exhibit?

Mr. Kenway: No, your Honor. I hadn't intended to offer it in evidence. I will be glad to.

The Court: You may substitute a corrected up-to-date version, if you like.

Mr. Kenway: Thank you, your Honor.

The Court: And it might be helpful. It will be Defendants' Exhibit AK.

Mr. Kenway: AK.

(The document referred to was marked Defendants' Exhibit AK, and received in evidence.)

The Court: The clerk will file for the plaintiffs as Exhibit 99 whatever is your complete list, that you may serve and file, of the exhibits, Mr. Subkow.

Mr. Subkow: I am sorry. My mind was wandering.

The Court: I say the clerk will receive and file as [416] Plaintiffs' Exhibit 99 a corrected and up-to-date list of exhibits.

Mr. Subkow: Thank you. We will supply such a list.

The Court: And, of course, you will serve it on the other side.

Mr. Subkow: Certainly.

The Court: And likewise the clerk will receive and file as Defendants' Exhibit AK an up-to-date, complete list of the defendants' exhibits.

Mr. Subkow: May I inquire, your Honor, and I think inquiry was made before, as to whether you will want to hear oral argument on this?

The Court: I like to hear oral argument in these cases.

Mr. Subkow: I know you do, and it is important. I would like a little time to organize my thinking for the presentation of this.

The Court: Would you prefer not to do it this afternoon?

Mr. Subkow: I would prefer not to do it this afternoon.

Mr. Kenway: If your Honor please, as you know, we are here from Boston, and it is Friday. I was very hopeful that we could finish today.

The Court: I couldn't hear it at all next week, gentlemen. I will be in Washington most of next week.

Mr. Kenway: It seems too bad to have to make a trip [417] across the country again.

The Court: Then let's hear your argument this afternoon, if you wish.

Mr. Kenway: Thank you, sir.

Mr. Lyon: May I inquire if the clerk's record shows that Exhibit U was received in evidence?

The Clerk: Yes.

Mr. Subkow: Then I will not be required to make my argument?

The Court: No, you won't need to, but let's hear what Mr. Kenway wants to say before he goes back to Boston, and not compel him to come back again.

Mr. Subkow: Of course, we wouldn't want to do that.

The Court: Then, 2:00 o'clock. We will recess until 2:00 o'clock.

(Whereupon at 11:52 o'clock a.m., an adjournment was taken until 2:00 o'clock p.m. of the same date.) [418]

Friday, March 28, 1958. 2:00 p.m.

The Court: You may proceed, gentlemen.

Mr. Kenway: Before undertaking the argument, I would like to state that Mr. Subkow has called my attention to the fact that Exhibit L, the license agreement we offered, was not up to date, and he has given me a copy of the up-to-date license, and I ask permission to substitute that for the one previously marked Exhibit L.

Mr. Subkow: No objection.

The Court: So ordered.

Mr. Lyon: Does the plaintiff rest?

Mr. Subkow: Plaintiff rests.

The Court: All the evidence is closed, as I understand it.

Mr. Kenway: Yes, your Honor.

The Court: You may proceed, Mr. Kenway.

Mr. Kenway: Thank you, sir.

Addressing myself to the issue of the validity of the patent here in suit there are three contentions which we believe are amply supported by the evidence here.

The first is that there was no invention involved in transposing old elements into a different combination. That is supported, as far as the evidence is concerned, by the plaintiff's own exhibits, such for example as shown in any [419] of the photographs of the back-in units. I have here Exhibit 16, for example, which shows the necessary elements arranged for a back-in unit.

Mr. Moon testified very honestly and candidly, and among other things he said that the derrick as shown in the McEwen patent under the same conditions of use will bear its load and do its work

just as they do in our current units. So that there is no change in the essential operation of the equipment itself as far as the derrick is concerned.

Hydraulic rams were used to erect derricks before.

The hoisting equipment has been approximately the same for years.

And the principal difference is that the engine has been shifted to the rear of the vehicle and the hinge mounting for the derrick has been advanced to the front of the vehicle. [420]

I am sure your Honor is familiar with the often-cited A & P case, which holds that it is rather unlikely that there will be invention present when you have merely a re-shuffling of the old cards, so to speak, and I believe that it cannot be denied that here there have been no new elements, *per se*, but that it is simply a re-arrangement of the old elements.

The Court: What is the field in the pertinent prior art here? Does it cover such things as fire-fighting engine?

Mr. Kenway: Yes, it does.

The Court: As shown in the—I don't recall the name of that patent, but it is the first one in Exhibit S.

Mr. Kenway: Yes, sir, the Morton patent.

The Court: The Morton patent.

Mr. Kenway: With the telescoping tower. That is not in one sense in the same art that we are talking about here, but in another sense it is. It depends on how you define the field. If you talk

about portable telescoping units which are to be carried in a vehicle that is flat, and then erected and put in an operating position, that would speak for them.

The Court: You are arguing the question of no invention now at this point?

Mr. Kenway: Yes. I was going to take up the prior art patents later, but I would be happy to do it.

The Court: No, I should not have interposed that question [421] at this juncture.

Mr. Kenway: It is quite all right, sir.

The Court: Your first contention is that no invention is involved in the transposition of the old elements into this new combination?

Mr. Kenway: Yes, sir. And on that argument, as I stated, the only prior art I need to rely upon is our old units per se, or the old Hopper units, which were of the back-in type.

The quality of invention isn't there. There was nothing particularly ingenious or clever about it. There was no unobvious result.

Of course, it is easier to drive something head first into position, just as it is easier to drive your car into your garage head first rather than to back in.

The Court: As I understand your position, then, your contention is that all that was done here is to take the driver's head and put it under the foot of the derrick?

Mr. Kenway: In a sense, that is correct.

The Court: That he could drive into the location instead of back in?

Mr. Kenway: That is what is in common in the patent in suit and our device.

The Court: Is it contended that that is the only improvement Moon made?

Mr. Kenway: Well, in a sense this case is most peculiar [422] on that basis. When you go over the file wrapper, you will see that he came in asking for a patent for just that, that broad an idea, if you will, and his claims were directed to it, and the Examiner rejected those claims on the basis of the same argument that I have made here, that you simply reversed the cards.

They put up a strong fight, with affidavits and long arguments, trying to convince the Examiner that he should grant the patent merely on having this derrick on the front, instead of at the back, and the Examiner was adamant.

Then there were a series of interviews in the Patent Office, as a result of which the claims in suit were finally granted, and the reason they were granted, as it appears from the record, is that the Examiner said he would allow claims provided those claims specified the relationship of the legs of the derrick to the driver's position. If they straddled that driver's position when the derrick was erected, for some reason he would allow the claims.

Now, unfortunately, the record is silent as to why he felt that the addition of that limitation would carry the claims through the Patent Office.

That is why, in examining Mr. Moon, I asked

him if he had in mind that he could stick the derrick over the cab so that the operator could look up and operate the controls. [423]

The Court: Was that argument advanced to the Examiner?

Mr. Kenway: I don't know, your Honor.

The Court: I mean, does the file wrapper disclose any such argument?

Mr. Kenway: No, sir. That is pure speculation.

The Court: Have you finished on the first contention now?

Mr. Kenway: Well, we rather got sidetracked on this business of what happened in the Patent Office, your Honor, and while we are on that, this gets us into file wrapper estoppel.

The Court: We had better save that for infringement, hadn't we?

Mr. Kenway: I think that would be more orderly, yes, sir.

Now, still on this business of any unobvious results, your Honor has heard a lot of testimony with respect to the legality of the equipment, and the thrust of the plaintiffs' testimony is that you couldn't design a unit that would be legal with a back-in arrangement, but as soon as you adopted the drive-in arrangement, your troubles were over.

Unfortunately, for that argument, Mr. Hopper testified that you have legality troubles as far as the highway laws are concerned with all types of units, that it is a continuing problem, and that there has been no particularly happy solution of it.

One more point, you could probably take judicial

notice that many of the buses you see going on the street have engines in the rear. There is no particularly novel point there. And, indeed, it hasn't been claimed that that was an invention.

So, simply on the basis of not prior art in the technical sense, but the actual units that were operating in the oil fields, we contend that there is no invention. That finishes my argument on that particular phase.

Now, then, I had intended to discuss the prior patents in Exhibit S.

The Court: Is this on the second contention as to validity?

Mr. Kenway: Yes.

The Court: Is this also on the contention of want of invention?

Mr. Kenway: Yes, but phrased a little differently. Now, we are talking about prior art as shown in the patent literature, and our contention is directed to Section 103, which says that there is no invention if what was done would have been obvious to one skilled in the art at the time the invention was made.

Coming first to the Morton patent, your Honor will recall that the application for that patent was filed in 1904. And the problem which faced Mr. Morton was that of making a [425] telescoping tower which could be transported presumably from the fire house to the scene of the fire, carried horizontally through the street, and then erected into an operating position.

Perhaps the most constructive figure to start with

on Morton is Figure 10, where the telescoping tower is shown in one of its possible positions of operation, extended, hinged up from the front of the vehicle. And because it was a horse-drawn vehicle it happened that in Figure 10 they showed it as backed into the building. You might say that that's a drive-in unit backed in, perhaps.

In 1904, naturally, they didn't have reliable automotive engines so they used horses. They were still using horses when I was a boy. Certainly there could be no invention in substituting a conventional truck engine for horses.

The hinge was at the front. It used a hydraulic ram to raise it. They used a pneumatic engine to do it, which is what you would have used in 1904. Today you would use a hydraulic system with the liquid instead of the gas.

And the point of that patent is simply this: that even as long ago as 1904, when a competent engineer was presented with the same kind of basic problems here, that we have here, he solved it in the same way, as a matter of principle, that is involved in the patent here in suit. He wasn't dealing with oil well equipment, to be sure; but this is perhaps an [426] automotive, or a vehicle problem, looked at one way; and it's a combination of a vehicle and a tower or mast that you want to erect where you get when you want to use it. And your Honor may recall that Mr. Moon testified that at one time he was interested in a fire engine of some kind. So that it's no great leap from one to the other. And I think it can be argued that the problems are so similar that

it's only natural that solution to a fire engine problem might well suggest itself to someone concerned with our kind of equipment.

Moreover, your Honor will note that in Exhibit T-1, which is the book of patents relied upon by the Patent Office Examiner, that he cited hook and ladders and fire engine patents. So that in his view there was nothing wrong in opposing a patent in that particular aspect of the field to the patent in suit.

Unfortunately for us, evidently he didn't have Mr. Morton's patent at hand.

Evans is a patent, also, where he wanted to carry hoisting equipment around. If you will look at Figures 10 and 11 of that patent you will see a similar approach, where he had an engine in back and his hoisting equipment in front, and put his driver in between them. And he had a hoisting structure, a mast or derrick or crane, which he could hinge so that it would lie in horizontal position when you [427] wanted to take the vehicle over the road or around the dock, as your Honor suggested.

And here, again, I don't make any claim that this apparatus as shown in the Evans patent could be driven out to an oil field and used to pull rods and tubing. Obviously it couldn't.

The Court: You contend that this is an analogous art.

Mr. Kenway: Yes. When a problem comes, as I said you can define the art as an art which relates to portable hoisting equipment which is to be carried

on a vehicle. And in that sense Morton and Evans certainly qualify.

You can call this art strictly relating to oil field equipment, but I think that's an unnecessarily limited view, because certainly competent engineers recognize the analogy of the problems involved—many of the problems just like I was saying.

And going back to Morton for a moment, they have there a hoist on the tower so that people and equipment can be hoisted up and down and people rescued from buildings, and so forth. And there is nothing generically a mechanical principle which is different there; whether you hoist a man up and down or hoist some equipment from an oil well, you are still hoisting. And the same goes to Evans.

The Downie patent—as I stated earlier, I hadn't intended at the opening of the trial to spend much time on the [428] Downie patent because, frankly, if you look at Figure 1 it's somewhat antequated equipment in appearance.

But I was surprised to learn from Mr. Purdum that this sort of a rig is still in use today. And here we are again, application having been filed 45 years ago. They have an engine at the back to keep it away from the well head, presumably. And they have hoisting equipment at the front, and winches and so forth which drive that hoisting equipment is naturally between the engine and the hoisting equipment. And, again, for purposes of transport, the hoist or mast, whatever you wish to call it, is arranged to be hinged and drawn back flat so it is more convenient to transport it.

I see nothing peculiar to the derrick structure involved in the patent in suit which would make it fiendishly difficult to take the principles which you find in Morton, Evans and Downie and adapt them by good design engineering to the type of structure you have before you in this case.

That was all I intended to say about the prior art patents, unless your Honor has some questions on that.

The Court: As I understand it, none of the patents included in Exhibit S were cited in the Patent Office.

Mr. Kenway: That is correct. Not one of the patents cited here was before the Patent Office.

The Court: And your third contention as to validity?

Mr. Kenway: Yes, sir. Now, I move to the advertising [429] literature which was published by Waldrip more than a year before the application was filed for the patent in suit.

The Court: Before you do that, do you claim that any of these patents strictly anticipate the invention?

Mr. Kenway: No, your Honor, because I don't think in any of those patents will you find an arrangement where you have spaced front and rear legs and straddling the driver's position. So in that sense they don't anticipate it. And I say that those patents fulfill our burden under Section 103 of the statute, and to a competent engineer it would be obvious to do what was done.

So, now, proceeding to the advertisements which

were published by Waldrip in the spring of 1947. There it is our contention that under Section 102 of the Statute they do directly anticipate every material element of the patent in suit. And I wish to make it clear that we do not assert those advertisements under Section 103 as prior art. They were not. There was a considerable argument on that score advanced by Mr. Subkow in opposing our motion for summary judgment. I believe he will agree with me that we short-circuited that much of it.

The Court: You advance this prior publication contention under Section 102(b), as I understand it.

Mr. Kenway: Yes, indeed, your Honor. And under that Section if the invention had been described in a printed [430] publication more than a year before the application for patent in suit was filed, it is an absolute statutory bar — it could not have been a valid patent.

You have heard the testimony —

The Court: Now, does that mean that the precise invention must be described? In other words, what is described must be what is taught by the patent, must it not?

Mr. Kenway: Yes, your Honor. I think there perhaps the best approach is to look at Section 112 of the Patent Statute. That is the section which tells you what a patent application must do. And I would think that if it was obvious that we can apply that same test to these prior publications that we have made our case.

“The specification or application shall contain a written description of the invention * * *”

and so forth,

"* * * in such cold, clear, concise and exact terms * * *"

and now we come to the purpose of it,

"* * * as to enable any person skilled in the art to which it pertains or with which it is most nearly connected to make and use the same."

Therefore, I say that if a person skilled in this art could read those publications and know what's there, what they mean, so that he could proceed to design a unit of that [431] kind, we have met the test. Mr. Purdum was such a person, and that was the gist of his testimony.

But in connection with Mr. Purdum we had a problem. Obviously he studied the patent in suit. And we expect the argument, as far as he is concerned, that perhaps having read the patent in suit before he saw those publications he was unconsciously reading into them not his general skill in the art, which he is entitled to read into them, but his particular skill in the art which came from reading the patent in suit.

We felt we should do something to overcome that argument, and, therefore, we put on the stand Mr. Groner, who, as Mr. Lyon said, was entirely innocent of any knowledge, not only of the patent in suit but of oil field equipment in general. He was a competent machine designer without skill in this particular art, and yet to him, I believe your Honor would agree, he came close to finding out just what was there by the drawing and by the text, and that

conveyed to him the same essential salient features of the device that we find in the patent, with relationship to the parts, the hinge, the hydraulic rams, the erection, the telescoping derrick. [432]

As far as the engine in the rear is concerned, there is no problem, and it is the text of at least one of the publications, which specifically states that the engine is in the rear, and your Honor will recall as far as Mr. Purdum is concerned, the movements told him where the engine was, so to a man skilled in the art, or indeed to someone not skilled in the art, who was a competent engineer, those things carried a message, and we contend, therefore, they do serve as a statutory bar, completely voiding the patent.

The Court: Do all of the claims of the patent in suit place the engine in the rear?

Mr. Kenway: I believe so. It is my understanding they do. They don't? I don't think that is a matter of great moment, your Honor. I know that some of the claims do. I couldn't say which do and which do not. There is in the evidence an earlier abandoned application which Mr. Moon filed, and it showed a front-end derrick, and I presume that Mr. Subkow will argue that Mr. Moon is entitled to that earlier filing date, which moves him back far enough to block out these publications, so upon that score I believe I should refer to the statute again, Section 120.

That has to do with the benefit of the filing date of an earlier application, and it gives the conditions under which the inventor is entitled to the benefit of

the earlier date, but one of the requirements is in the last two lines [433] of that section of the statute:

"and if it contains or is amended to contain a specific reference to the earlier filed application."

Nowhere in the patent in suit is there any reference, specific or otherwise, to any other application.

Now, at the time the patent statute was passed, the application for the patent here in suit was pending in the Patent Office. It had been filed and it had not been issued, and I call your attention to the amendment, or, to the additional sections of the Patent Act of 1952, Section 4, "Time of Taking Effect," and 4(a) reads:

"The Act shall take effect on January 1, 1953, and shall apply to all applications for patent filed on and after such date, and to all patents granted on such applications. It shall apply to further proceedings on applications pending on such date, and to patents granted on such applications, except as otherwise provided."

So my argument is that the provisions of Section 120 were applicable to Mr. Moon's application.

Therefore, the publications in question, Exhibits M through Q, constitute a statutory bar, resulting in the total invalidity of the patent with which we are dealing here.

So we have three grounds on which the patent is invalid: [434] That it was a mere re-arrangement of parts old and common in the art, and that the difference was obvious in view of the patents to Morton, Evans and Downie, and that in any case the

patent is void because it was described in a printed publication or publications which were before the public more than a year prior to June 28, 1948, when the patent application was filed.

That is our case on validity.

I am not quite sure whether your Honor cares to hear us on infringement. I am prepared to discuss that.

The Court: Yes, I would like to hear you.

Mr. Kenway: I would like to find a place in the file wrapper before I start. Yes, here I am.

With respect to infringement, as I said earlier, Mr. Moon came into the Patent Office asking for a patent.

The Court: Before you do that, I think it would be helpful to me if you would tell me wherein you see the accused device is different from the device of the patent in suit.

Mr. Kenway: Well, briefly, your Honor, it is this: The claims of the patent in suit in four of the five claims require—oh, for example, at the end of Claim 4:

“causing a portion of the driver’s position to be positioned between the said leg portions, said leg portions extending from said hinge to rest on the [435] ground and straddle said driver’s position with the derrick in said erect position * * *”

Your Honor will note that in the patent in suit, looking particularly at Figure 3, for example, the rear legs of the derrick come right down astride of the steering wheel, so that when you are sitting

there you have one leg right at one side of you, and one on the other, and directly overhead is that hinge on which the derrick is pivoted.

The Court: The accused device does not straddle the driver? It straddles the cab, is that it?

Mr. Kenway: Yes, sir. In all of the defendants' devices, and in the devices actually constructed by Waldrip, that hinge point was moved forward so that it was at the extreme upper front corner of the cab structure, and, therefore, the derrick was out in front of the cab and driver's position.

The Court: Completely?

Mr. Kenway: Substantially so.

The Court: Of course, in the drawing in Figure 3, I suppose it is substantially so, isn't it?

Mr. Kenway: Well, if your Honor looks at Figure 3, you will see perhaps half the cab is actually within the confines of the derrick itself.

The Court: Yes, but as long as it straddles the cab at all, wouldn't that meet the claim?

Mr. Kenway: No, sir. [436]

The Court: In order to avoid infringement on that point, wouldn't you have to be able to say you did not straddle the cab at all?

Mr. Kenway: We say in view of the file wrapper we don't straddle the cab. This is the peculiar thing. It doesn't make much sense from a common sense viewpoint, at least, it doesn't to me. I don't see much difference between—

The Court: You mean the file wrapper limits the patentee to the point where he has to say that an infringer substantially straddles the cab?

Mr. Kenway: Yes, sir, that is quite evident from the file wrapper.

The Court: And not just in a small degree, but in a large degree,—a half or better?

Mr. Kenway: Yes, sir.

The Court: Is that what you were saying?

Mr. Kenway: Yes, sir.

The Court: If only 25 per cent straddles the cab, do you say it avoids infringement?

Mr. Kenway: Well, it is difficult to draw the line.

The Court: Well, we have to draw it, don't we?

Mr. Kenway: I think we can do that.

The Court: Must we not, and isn't it absolutely imperative that we draw the line?

Mr. Kenway: Yes, sir. [437]

The Court: And unless you can say our device—the derrick in our device does not straddle the cab at all, so that we don't do that at all?

Mr. Kenway: Well, that is the case.

The Court: Then I misunderstood you. I thought you said that you did straddle it a little bit.

Mr. Kenway: No, sir, I didn't mean to say that.

The Court: Not even a tiny bit, and not at all?

Mr. Kenway: I thought you were talking about the Waldrip construction. I am sorry.

The Court: Oh, I am sorry. I probably misled you. Does the accused device straddle the cab at all?

Mr. Kenway: No, sir.

The Court: So that you say that the plaintiffs' combination is such that in order to build it as taught in the patent, the legs of the derrick do straddle the cab; is that correct?

Mr. Kenway: In order to build a unit which meets the language of the claims, you have to have that derrick straddling the cab, yes, sir.

The Court: And your answer to that, as I understand it, is even though we use the same combination, it is different to the extent that the legs of our derrick do not at all straddle the cab.

Mr. Kenway: Yes, sir. [438]

The Court: So, therefore, the claims cannot, as we say, read on our device; is that it?

Mr. Kenway: Yes, sir, that is just what we do say.

The Court: The file wrapper does not have anything to do with that, does it?

Mr. Kenway: Oh, yes, it does, your Honor.

The Court: Except as limiting the scope of the claims?

Mr. Kenway: Well, you have—

The Court: Assume there is nothing in the file wrapper, wouldn't you make the same contention?

Mr. Kenway: No, I don't think I could.

The Court: Why? Because this would be a substantial equivalent; is that it?

Mr. Kenway: Yes, precisely so. You heard Mr. Moon testify that our construction was the substantial equivalent of what is called for in the claims.

The Court: Now, you cited me to the file wrapper, pages 17 and 48 of Exhibit T.

Mr. Kenway: Yes, sir.

The Court: But while attempting to listen to the testimony, I didn't find what you had in mind, probably.

Mr. Kenway: Well, what I had in mind was this——

The Court: If we look at page 17, I did read Claim 6. Isn't that it there?

Mr. Kenway: Yes, sir. [439]

The Court: I read that claim:

"A portable drilling derrick, comprising a vehicle chassis, front and rear wheels for said chassis, the ends of the legs of said derrick protruding ahead of said front wheels and the top end of said derrick being positioned toward the rear of said chassis, a hinge on said derrick, said hinge being mounted at the front end of said chassis, and means positioned on said chassis to rotate said derrick about said hinge point to move said derrick to an erect position."

Mr. Kenway: Yes, sir.

The Court: That is the original claim 6?

Mr. Kenway: Yes, sir.

The Court: As applied for?

Mr. Kenway: Right.

The Court: Now, what happened to it?

Mr. Kenway: Well, it was cancelled. The Patent Office wouldn't give it to him.

The Court: It was rejected. Now, what did the patentee then do?

Mr. Kenway: Well, they filed several amendments and affidavits, and, finally, if you will turn over to page 48 of the file wrapper, you will see the termination or near termination of the discussion before the Examiner. [440]

The Court: There is a long document there. Now,

will you point it out? Is it on page 48 that the particular language appears?

Mr. Kenway: Yes, sir. There is a paragraph there beginning, "Remarks."

The Court: Yes.

Mr. Kenway: And it is about the third sentence in that paragraph. He acknowledges first the interview he had with the Examiner, and what they discussed.

The Court: "One of the features which the Examiner indicated as possibly carrying the claim over the then cited references was the straddling of the cab by the derrick when erected."

Mr. Kenway: Yes, sir.

The Court: (Continuing) "It is respectfully urged that the new references do not in any way meet this claim, either alone or in combination with the cited references. The additional Claims 15 to 17 are likewise patentable." Is that what you cite as the estoppel?

Mr. Kenway: Yes, sir, because those limitations do appear in the claims.

The Court: And the claims were amended to insert that limitation?

Mr. Kenway: Yes, sir, new claims were written putting in that limitation. [441]

The Court: Claim 6 on page 17 of the file wrapper, as you read it, does not embrace that aspect of it; is that correct?

Mr. Kenway: No, sir, we would infringe that claim, because the hinge could be anywhere up at the front of the chassis; but it doesn't recite the

relationship of the platform or the legs of the derrick and the driver and the hinge, and so forth. We would infringe that claim.

The Court: But your point here on the file wrapper estoppel feature, as I understand it, is that the patentee urged that point as carrying the battle of validity over the claim as originally presented?

Mr. Kenway: Yes, indeed, your Honor.

The Court: And that the claim was rewritten to—where does it appear as rewritten?

Mr. Kenway: I will say that he didn't rewrite Claim 6. That was just cancelled, and new claims were put in.

The Court: Yes, that is what I am attempting to refer to.

Mr. Kenway: Let me see here. Claim 1 of the patent in suit was, I believe, Claim 18 in the file wrapper.

The Court: Now, are you referring to the Examiner's comments on page 67, where he says:

"Upon satisfactory correction of Claims 14, 15 and 17 along the lines indicated above, such claims [442] will appear to be allowable"?

Mr. Kenway: Yes, sir.

The Court: That is at page 67.

Mr. Kenway: Unfortunately, I have a file history where the pages are different.

The Court: That is the comment or remark made on May 28, 1953.

Mr. Kenway: Yes, sir. That is on paper No. 12; is that right?

The Court: Yes, paper 12.

Mr. Kenway: You will also notice the Examiner's statement in the second paragraph of that letter, the last sentence, after objecting to the language used, where he says:

"The rear legs of the derrick, as set forth in the specification, and not the front legs as stated in line 19 of Claim 17, straddle the cab."

He pinned it right down to the particular legs.

The Court: Of the derrick which straddle the cab?

Mr. Kenway: Yes, sir.

The Court: Now, does the next document meet those objections? [443]

Mr. Kenway: Well, the argument there, he then made the changes in those claims resulting in the claims as you see them in the patent in suit.

The Court: Is the key here the location of the hinge?

Mr. Kenway: Well, they are interrelated, your Honor. If you put the hinge directly over the driver—

The Court: Yes, I know they are interrelated. But does he say in the claims where the legs will be, like the Examiner says?

Mr. Kenway: Yes. In the claims of the patent looking at Claim 1, which was Claim 18 in the—

The Court: " * * * lower rear leg portion to straddle said driver's position when the derrick is in said erect position * * * " ?

Mr. Kenway: Yes, sir. Just before that he said, "The hinge, being located with respect to the longitudinal axis of said chassis to cause a portion of the

driver's position to enter said free area and the lower leg portions * * * and so forth.

And you could see that if the hinge were directly above the driver, the rear legs would come down one on each side of him.

And then you see in the next claim, the last clause or so talks about "locating the driver's position between said leg portions with said leg portions straddling said driver's [444] position when the derrick is in said erect position."

And then you have similar language in Claim 3 and Claim 4. It's the last few lines of each claim on which we deal here.

What we contend to be in the same concept is phrased a little differently in Claim 5, which is Claim 22 of the patent.

The Court: Do you find that in Claim 5?

Mr. Kenway: Yes. Again in the last five or six lines.

"* * * said hinge being located with respect to the longitudinal axis of said chassis locating said lower end of one pair of front and rear legs and their respective co-operating means to one side of the driver's position and the lower legs of the other pair of front and rear legs in their respective co-operating means to the other side of the said driver's position with the derrick in said erect position."

Which is a somewhat longer way of saying "straddling."

It would, therefore, appear that what the plaintiff is trying to do here is to recapture the ground

he gave up in the Patent Office. Indeed, he has to do that if he is going to stretch his claims to cover the defendant's structure. And that practice is explicitly condemned by the Supreme Court in Exhibit Supply Company against Ace Patent Corporation, 315 U. S. 126; and in this Circuit in B & H Electric Company [445] against M. Stevens Company, 233 F. 2d 879.

That's our case on infringement. And I would like to thank Mr. Subkow for his many courtesies. And I have enjoyed very much appearing here.

The Court: Do you wish to say anything now, Mr. Subkow?

Mr. Subkow: No, your Honor, because in presenting my argument I will have to rely to some considerable extent upon the Woody deposition. Your Honor has not yet read the Woody deposition. And my argument would be quite unintelligible without that. And I would like an opportunity to organize that so as to limit the amount of work and effort you would have to do.

The Court: Very well.

Mr. Subkow: If your Honor will be giving consideration to these matters, I suggest Exhibit 1-A would be quite helpful in considering the claims. It has analyzed the claims.

The Court: Yes. I have that here.

I shan't be giving it any consideration until after I have heard your argument.

Mr. Subkow: I suspect so. When do you want to hear argument from me?

The Court: What is that old saying that is up in

the Court of Appeals around the ceiling up there? It says, "Hear one side and all is in doubt; and hear both sides and all will be clear." [446]

I don't know about that latter one.

Mr. Subkow: I don't know. I sometimes wonder how a judge does come to his decision.

The Court: Well, it certainly isn't wise to do it after hearing only one side.

Mr. Subkow: I hope your Honor won't. I am confident of that.

The Court: I don't know. That's an old saying that probably comes from the Good Book around Deuteronomy or something. But I am not sure.

Mr. Subkow: A lot of our social philosophy comes from that, your Honor.

The Court: When would you like to do this?

Mr. Subkow: At your convenience. You will be away all next week, I understand.

The Court: From Monday on, yes.

How much time would you estimate it would take?

Mr. Subkow: Well, I undoubtedly will have something organized for your Honor, maybe in writing. I would want to read from the deposition. I would like, I think, at least two hours.

The Court: Would Monday afternoon, April 14th, be agreeable?

Mr. Subkow: Yes.

Mr. Lyon: It apparently will be necessary for me to [447] attend as these gentlemen were returning to Boston, and make whatever reply seems indi-

cated. I am going to trial before a visiting judge here on the 14th.

The Court: I could set it for Friday afternoon, April 11th on the chance that time might be available.

Mr. Subkow: Shall we set it for that date, then, and then if there is any change I suppose we will be notified in due time.

The Court: I suppose you could get excused, couldn't you, from Monday afternoon, if you can explain to the visiting judge that we don't usually try cases on Monday? Explain to him that is our law and motion day on Monday.

Mr. Lyon: I don't know. What is the name of the judge that is going to be here? It's a short name.

The Court: Judge Wham from Illinois.

Mr. Lyon: He will be trying this case. I never met him.

The Court: I am confident he will excuse you for Monday afternoon if we set this for that date.

Mr. Subkow: That would be the 14th?

The Court: That would be Monday afternoon, April 14th. I think that is better than taking a chance on Friday, because we would probably disappoint ourselves. And I am confident that Judge Wham, who is from the Southern District of Illinois will accommodate you. [448]

Mr. Lyon: I am certainly willing to try.

The Court: Who is on the other side?

Mr. Lyon: Mr. Miketta, I believe.

The Court: Can't you arrange it with him in advance, probably, and explain to the judge that we

usually set these matters on Monday? Unless it will interfere with his schedule.

How long do you estimate the case will require?

Mr. Lyon: Judge Hall sets up that calendar.

The Court: How long is it estimated the case will take?

Mr. Lyon: It's going to take about the same amount of time that this one did.

The Court: Well, I think it would be better to set it on Monday afternoon, April 14th, at 2:00 o'clock. And then if that doesn't meet with the convenience of Judge Wham, why, of course, we will continue it.

Mr. Lyon: All right.

Mr. Subkow: May we have permission to withdraw that big chart to conform our exhibit with the one that was marked?

The Court: Any objection?

Mr. Lyon: No objection.

The Court: So ordered.

Then I will continue this to April 14th at 2:00 o'clock for further oral argument.

Anything further, gentlemen? [449]

Mr. Kenway: No, your Honor.

Mr. Subkow: Thank you, your Honor.

The Court: Very well, gentlemen.

(Whereupon, a recess was taken in the above-entitled case until 2:00 o'clock p.m., Monday, April 14, 1958.) [450]

Certificate

I hereby certify that I am a duly appointed, qual-

ified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 28th day of March, 1958.

/s/ DON P. CRAM,
Official Reporter.

/s/ MARIE G. ZELLNER,
Official Reporter. [451]

[Endorsed] : Filed August 4, 1958.

PLAINTIFFS' EXHIBIT No. 98

[Title of District Court and Cause.]

DEPOSITION OF WAYLAND B. WOODY

The deposition of the witness, Mr. Wayland B. Woody, examined on behalf of the plaintiffs, pursuant to due notice, at the plant of the Franks Division, Cabot Shops, Inc., 2801 Dawson Road, Tulsa, Oklahoma, commencing at 10:00 a.m., Monday, June 24, 1957, before Garn Gordon, a certified shorthand reporter and Notary Public in and for the State of Oklahoma.

Appearances: For the plaintiffs—Mr. Philip Sub-

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
kow, 727 West 7th Street, Los Angeles 17, California. For the defendants—Kenway, Jenney, Witte & Hildreth, by Mr. George W. Crowley, 24 School Street, Boston, Massachusetts. [1]*

Stipulations

Mr. Subkow: It is stipulated, Mr. Crowley, that this deposition is taken on notice, which has been handed to the reporter, which will be attached to the deposition, and that said notice is a due and proper notice under the Federal Rules of Civil Procedure; and I show you a letter, copy of which has been handed to the reporter, dated June 12, 1957, addressed by myself to Mr. Charles G. Lyon, attorney for the defendants, and that the same is a due and proper demand, under the Federal Rules of Civil Procedure, for the production of the documents therein listed.

Mr. Crowley: I may well go along with you, Phil, if you will concede that some of these things, which may come up as we go along, that Mr. Woody be given some opportunity to do some more digging, bearing in mind that we are going over about a twenty year period here practically.

Mr. Subkow: Yes, ample opportunity will be given to Mr. Woody to find and produce the documents.

Now, I believe it is further agreed that it would

* Page numbers appearing a top of page of Original Deposition.

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

be admitted by the defendant, and the defendant waives all further proof of the following:

(a) That Franks Manufacturing Corporation was prior to the 5th day of April, 1955, an Oklahoma corporation, and had its principal offices at Tulsa, Oklahoma, and a legal and [2] established place of business in the southern district of California, from and after March 9, 1954 until said 5th day of April, 1955;

(b) That on or about said 5th day of April, 1955, said Franks Manufacturing Corporation did merge with the Cabot Shops Inc., a Massachusetts corporation, and that the merged corporations, the defendant in the herein action, has continued the business of said Franks Manufacturing Corporation, through the Franks Division of said Cabot Shops Inc., and has maintained since said 5th day of April, 1955 and does now maintain a regular and established place of business in Tulsa, Oklahoma, and in Los Angeles, State of California, within said southern district of California;

(c) That the defendant herein did on February 24, 1956 sell to the Union Oil Company of California, within the southern district of California, a Super Senior Clipper Drive-In vehicle, serial number 1861, and that the defendant and its predecessor corporation, the Franks Manufacturing Corporation, did subsequent to March 9, 1954 and prior to the bringing of this action, sell within the United States, including said sale to said Union

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
Oil Company, a total of seventeen (17) Clipper Drive-In units, to-wit: three (3) Midget Clippers, nine (9) Senior Clippers, three (3) Super Senior Clippers, and two (2) Clippers identified by the symbol 137-65-G.

(d) That defendant has acquired all the liabilities [3] of said Franks Manufacturing Corporation, an Oklahoma corporation, and,

(e) The defendant does not claim any ownership or any part of the right, title and interest in or to said Letters Patent 2,671,537, or in or to the inventions and discovery secured thereby, nor any shop right, or any other right or license thereunder or thereto.

Mr. WAYLAND B. WOODY
of lawful age, being first duly sworn, deposeth
and saith in reply to the interrogatories propounded,
as follows, to-wit:

Direct Examination

Q. (By Mr. Subkow): You have given your name to the reporter? A. Yes.

Q. Have you given your address too?

A. No. You mean my home address?

Q. Yes, your home address.

A. 2646 South Florence Drive.

Q. Are you connected with the defendant Cabot Shops, Inc.? A. Yes, as an employee.

Q. What is your position?

A. Chief engineer. [4]

* * * * *

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

Q. Then we will understand a Drive-In unit to be a unit in which the derrick is mounted on a vehicle so that the crown of the derrick is toward the rear of the vehicle and the front of the derrick is toward the front of the vehicle, is that correct?

A. Yes. [11]

Q. And a Back-In unit would be the reverse, in which the derrick is mounted on a vehicle with the crown of the derrick toward the front of the vehicle and the front of the derrick toward the back of the vehicle.

A. That's right, and the front and back, as far as the vehicle is concerned, is determined by the direction it normally is driven down the road.

Q. Yes. [12]

* * * * *

Mr. Subkow: Just to keep our record straight, let's offer for identification, the '57 catalog of Franks Division, [16] Cabot Shops, Inc., as plaintiff's exhibit 1 in connection with the deposition of Mr. Woody, to which Mr. Woody has been referring in his previous testimony.

The Witness: Yes.

Q. (By Mr. Subkow): Mr. Woody has asked to see a previous catalog which plaintiffs have in their possession, and it is entitled Franks Division, Cabot Shops, Inc. catalog 56, in which there is a loose fly sheet showing Clipper 137-65. The catalog and the fly sheet are here offered for identification as plaintiffs' exhibit 2. [17]

* * * * *

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. All right. Referring again to exhibit 2, will you identify in exhibit 2, the units which appear at pages 1883, 1884 and 1885 of the catalog exhibit 1?

A. Well, now——

Q. Let's identify them, just take 1883 of exhibit 1. [18] A. 1883 appears at 1807.

Q. Of exhibit 2?

Q. Of exhibit 2? A. Right.

* * * * *

Q. And 1885 of exhibit 1, the structure shown on page 1885—— A. Is the same as 1809.

Q. —is the same as 1809 of exhibit 2?

A. Right. [19]

* * * * *

Q. So that summarizing, we will say the structures offered for sale, are those previously identified. Now, as I see it, there are three kinds of units that you have sold? A. Right.

Q. One with a single set of front wheels shown on 1810 of exhibit 2? A. Yes.

Q. A Senior Clipper type shown on page 1809 of exhibit 2, and the Super Senior Clipper type shown on page 1808 of exhibit 2.

A. Right. Correction. The Super Senior, there may be some confusion, but the Super Senior shown on 1808 and 1807 are the same basic unit, except for the size of components, so they should be treated as one.

Q. So there are really three as I have stated?

A. Yes. [20]

* * * * *

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. This is a drawing which you have handed me, identified as a Self-Propelled Servicing Unit, drawing number 100-075. A. Right.

Mr. Subkow: We will offer that drawing for identification as plaintiff's exhibit 3, in connection with the deposition of Mr. Woody.

Q. Just to get the record straight now. Drawing 100-075 is page 1883, is that what you said?

A. That is correct.

Q. Page 1883 of exhibit 1 A. Yes.

* * * * *

Q. You have shown me a drawing entitled Senior Clipper, number 41-129, which is an original vellum pencil drawing and can you identify the structure of which this is the drawing? A. This is—

Q. By this you mean?

A. 1884 of exhibit 1.

Q. The structure shown on page 1884 of exhibit 1? A. Right. [21]

Q. And this will be plaintiff's exhibit 4. Now, have you the drawing showing the structure shown at page 1810 of exhibit 2?

A. I don't have those. I think they can be produced. [22]

* * * * *

Q. Now, are the relationship of parts on assembly 25-A, the same as on the form shown in 1810 of exhibit 2?

A. They are similar. The components are different and the spacing is different.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. What components are different? What spacings are different?

A. Well, the drive components, this was actually built—was built with a mechanical transmission where this has a semi-automatic transmission and you will notice that the bogey is set back from the back end of the frame.

Q. On the form shown on page 1810?

A. Yes, whereas here it is at the extreme rear end.

Q. But with respect to the derrick and the derrick mounting and the pivoting of the form shown on 1810, is that the same as that shown in assembly 25-A? A. Very nearly.

Q. The difference being where?

A. Well, this shows—

Q. "This" being assembly 25-A? [26]

A. Assembly 25-A shows the raising cylinders at a slight angle, where they are vertical in the unit shown on 1810, which is merely a matter of positioning and assembly itself.

Q. Otherwise they are the same? A. Yes.

Q. (By Mr. Subkow): I offer assembly 25-A for identification as plaintiff's exhibit 5.

Q. Now, you have picked up another form, showing assembly drawing number 109. Will you identify that.

A. That is the same basic unit as 25-A, except for the tandem front axle.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. In other words, it represents the unit shown on 1884 of exhibit number 1?

A. As actually built.

Mr. Subkow: I offer this as the plaintiff's exhibit number 6.

Q. I show you assembly drawing 94-A. Can you identify the structure shown on that drawing?

A. That is the unit on page 1883.

Q. Of exhibit 1? A. Of exhibit 1, yes.

Q. Of the '57 catalog, exhibit 1. A. Yes.

Q. As actually built? A. Yes. [27]

Mr. Subkow: I offer that as plaintiff's exhibit 7 for identification.

* * * * *

Q. I show you assembly drawing number 48. Can you identify the structure there shown?

A. That is essentially the same rig that is shown on page 1884 of exhibit 1, '57 catalog.

Q. As actually built?

A. Well, there is a difference in the hoist there, it isn't quite accurate, but essentially that describes the unit.

Q. As actually built? [28] A. Yes.

Mr. Subkow: We offer this as plaintiff's exhibit 9.

Q. If I haven't asked you before, I believe this is correct, as explained in your previous deposition, each of the structures shown in exhibits 5 to 9 inclusive, show structures as actually built and sold

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
by the defendant and its predecessor in interest,
is that correct? A. Yes.

Q. I now show you assembly drawing number 103. Can you identify the structure there shown?

A. That is the same unit, page 1884, of the '57 catalog.

Q. Exhibit 1?

A. Yes, with variation in components which changes the weight distribution.

Q. Showing the structure as actually built by defendant and its predecessor and sold by them?

A. Yes. That unit was not built, none was completed before the merger.

Q. But has been built and sold since the merger?

A. Yes.

Q. You are now pointing to the assembly drawing 103? A. Yes.

Mr. Subkow: We offer that as exhibit 10. [29]
* * * * *

Q. I show you a drawing, having no markings, and will you identify the structure which is shown on this drawing?

A. That is a more accurate description of the unit shown on 1884.

Mr. Subkow: The drawing, I will offer that drawing as plaintiff's exhibit 14.

Q. And the form is actually sold by the defendant? A. Yes.

Q. It shows apparently the unit in position,

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
ready for the elevation of the derrick, is that correct?

A. That's right, except that the outriggers were not pulled out. [32]

Q. And prior to the setting of the outriggers?

A. Yes.

Q. Now, we have some more drawings here. You handed me some free sheets marked New Midget Clipper. Will you identify this free sheet and the structure there shown?

A. That is an artist's drawing of the unit before construction, that is described on page 1810 of exhibit 2.

Q. When was this brochure printed and distributed?

A. These were distributed at the West Texas Oil Show in 1954.

Q. At the time that the unit itself was shown?

A. That's right.

Q. Was it distributed to anybody prior to that date?

A. I am quite sure that it wasn't.

Q. Did the drawing show the unit as actually exhibited at the Show?

A. Not as actually exhibited. The photograph which we have brought—

Mr. Subkow: First let's mark this exhibit plaintiff's exhibit 15.

A. This photograph is the artist's conception,

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
this photograph shows how it actually looked when
it was built. Here is another view.

Q. Let's identify them. Plaintiff's exhibit 16,
is a side view of the unit referred to in plaintiff's
exhibit 15, as it was actually constructed and demon-
strated at the West Texas Oil Show, is that
correct? A. That's right.

Q. What year? A. 1954.

Q. And is the first unit so built and demon-
strated of this Drive-In type? A. That's right.

Q. And plaintiff's exhibit 17, is another view of
the same structure, from another angle, taken at
the same time and at the same place, is that correct?

A. No, this was taken in the plant yard. I pre-
sume as it left to go to the Oil Show.

Q. But is of the same structure and showing the
derrick in the vertical position before extension of
the mast, is that correct? A. That's right.

Q. You say this was the vertical position, but
it actually has a slight lean forward, doesn't it?
How many degrees would you say?

A. It appears to me it is probably—there is
nothing straight to go by, but it is probably a de-
gree or so. It is not necessarily the working posi-
tion, it was just put up there.

Q. But in the working position, it slightly leans
forward, does it not?

A. It leans—that height will average three and
a half to [34] four degrees in the working posi-
tion, depending on the situation.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. And you call that vertical? A. Yes.

Q. Can we get our drawings in numerical order, so that I can have a set for the witness and a set for me to work with. Now, you have produced some more photographs. Will you identify these additional photographs?

A. This is a photograph of the first,—well, it is the unit illustrated on page 1884 of exhibit 1, and is the first unit as actually constructed.

Q. And this was sold? A. Yes.

Q. Showing the derrick in erect position and guyed? A. Yes, that is right.

Mr. Subkow: We will mark this exhibit plaintiff's exhibit 18.

Q. I show you a photograph of what looks like an artist's rendition of something. What do you identify that as?

A. That is the artist's conception of a servicing unit built on a special chassis that he proposed to build.

Q. Will you tell us where did you obtain that photograph?

A. That was furnished to us by the Dart Truck Company, of Kansas City, Missouri.

Q. When was it furnished to you?

A. To the best of my knowledge, sometime in 1952 and now, [35] I don't know when.

Q. Who furnished it to you then?

A. You want the man's name don't you, and he

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
is no longer with Dart. He has a nickname but his
right name, it slips my mind right now.

Q. Have you any correspondence of any kind
with him? A. Yes.

Q. Can you locate that correspondence and let
us have it— A. Yes.

Q. —before we finish?

A. Yes, we will get it.

Q. Mr. Woody, will you take these drawings,
these exhibits and segregate the typical example of
the three types of structures which you sold. I
believe we can start with 3 and 4, and then we will
select the one showing the one having the front
wheels.

A. If I understand what you want is all of the
other exhibits that are essentially this same unit?

Q. What I want is to select the drawings show-
ing the three types of units we have been talking
about, and I think plaintiff's exhibits 3 and 4 shows
two of those types. A. That's right.

Q. Therefore, we want one only of the third type
that will show best the construction of the device.
Is there some surface we can put this on some-
where? [36]

* * * * *

Q. I show you a drawing, no number, marked
Clipper Midget, dated 7-10-54 drawn by Scott. Can
you identify that drawing?

A. That is essentially the same—that is your
preliminary drawing shown on page 1810.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. With such differences as appear from comparison of the two, is that correct?

A. Yes, it has a little different drive.

Q. The drive unit from the engine, otherwise it is the same? A. The same.

Q. I notice however, that there is a difference in the positioning of the jack. In 1810 it is vertical and the drawing to which you refer it is slanted.

A. Well, this is using the core drill cylinder with a shorter derrick and this actually was built with a heavier derrick.

Q. You mean 1810?

A. 1810 and it has multiple stage cylinders and this is a single stage.

Q. By "this" you are referring to the drawing which was [37] identified and which we will offer as plaintiff's exhibit 20. Exhibit 19 is offered for identification, and you will get that correspondence for us? A. Yes.

Q. Exhibit 20 is the unit with the date 7-10-54 and drawn by Scott? A. Yes.

Q. I show you a drawing marked with the number 99-005, Junior Clipper Hoist. Can you identify that drawing?

A. This drawing represents the first unit of this type as built with the single axle which is illustrated at page 1809 of exhibit 2.

Q. This will be exhibit 21. I show you drawing 99-006. Can you identify that?

A. That is the same unit as 99-005.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. That is the same as plaintiff's exhibit 21?

A. The same as exhibit 21, except that it shows a tandem front axle arrangement, as is also shown in the picture on page 1809 on exhibit 2.

Q. Mr. Woody, you have now recalled the name of the man associated with the Dart Truck Company who brought exhibit 19 to you?

A. That's right.

Q. What is his name?

A. W. R. Ross, he was sales engineer for Dart at that time. [38]

* * * * *

Q. In front of us. Now plaintiff's exhibit 3, as I understand it, shows a side view on the bottom and the top view at the top of the drawing—no, I beg your pardon, an underneath view on the top of the drawing. A. That is a plan view up above.

Q. Yes, a plan view. I beg your pardon. A plan view on the top and on the side to the right adjacent the portion which shows the Franks' name plate, the front view. A. Right.

Q. Of the structure which you have identified when you [39] identified this drawing.

A. Right.

Q. Now, I will give you a red pencil, Mr. Woody, and I ask you to mark on the drawing the chassis of the structure, by a notation for example 1.

A. The chassis, as I understand the chassis, the chassis is the frame, the supporting frame for whatever is being carried, together with all axles and

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

wheels, and it would mean blocking off a complete portion of it. This is the chassis frame right here.

Q. The chassis frame then you mark as 1.

A. Right, that's 1.

Q. Now the chassis frame consists of what?

A. Well, there is the bogey—

Q. Would you mark the bogey.

A. Which is this assembly drawn there just by—actually I think it would be generally understood, if we just put a mark like that, which applies to both of the rear axles and supporting assembly.

Q. You are marking it with a number, what number? A. With the number 2.

Q. Now, the bogey is composed of a carrier which you will please mark 3.

A. Here is your two axles.

Q. Mark the axles for us please. [40]

A. All right. The axle assembly centers around the area number 3, and here is another one right here.

Q. That is the rear axle assembly?

A. Yes.

Q. And it is mounted on a frame work of some kind?

A. A tandem suspension system, which in this case is shown here, and the only part of it that is shown, this mechanism here, we can mark that 4.

Q. Mark it on the upper one.

A. And here, with its connecting material is 4, and here it is again. This is also number 4.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Is this pivotally connected to the chassis frame there?

A. It oscillates about this center here.

Q. Will you mark that 5?

A. Yes, a number 5.

Q. Does the bogey axis pivot upon any axis perpendicular to the axis of 5? A. No.

Q. I see also two sets of wheels mounted at the front of the chassis frame. Will you explain the construction of that mounting please.

A. The two sets of wheels at the front of the chassis frame are in effect a powerless tractor, using tractor in the terms that it is used in the highway trucking industry. It consists of a fixed rear axle, which we can number as 6, and a steerable [41] front axle, number 7, together with the supporting springs, the frame work and steering mechanism.

Q. Will you mark the frame work with a number 8. A. It is the frame work.

Q. Does it appear on the upper drawing too?

A. A portion of it appears out here.

Q. Will you mark that portion?

A. And here. Those are both number 8.

Q. Will you mark axle 7. A. Here is 7.

Q. Will you please be so good as to connect the red line.

A. The center of rotation of the wheels is there, and of course this dotted section—

Q. Mark that 7-A, since we are talking about it.

A. This is 7-A, and then this become 7-A here.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

The 7 is the axis or is the—if we bring it down to the rotating center of the wheel, then that rotating center is—

Q. Is 7, the axis of the axle upon which the wheel is mounted? A. Yes.

Q. All right.

A. And that is out of sight here.

Q. Will you mark the two wheels, by appropriate numbers, 9 and 10.

A. You mean these front ones? [42]

Q. Yes, the front ones by nine.

A. Right.

Q. And the other front wheels that are behind there by 10. A. Right.

Q. Now, does the entire bogey pivot about an axis perpendicular to the horizontal? A. Yes.

Q. Will you mark that axis please.

A. It should be an extension of this center line here.

Q. Can you mark it? Mark that with some number. I think the next number is 11.

A. Number 11 is the axis, perpendicular axis that it rotates about.

Q. I understand that the chassis frame there is mounted upon a block or— A. A fifth wheel.

Q. —a block of some sort. Is it this structure I am pointing to?

A. That is part of the chassis structure. It is mounted on a fifth wheel which is this assembly in here.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. What do you mean by fifth wheel? Will you mark it with a number, so we will know what it is?

A. It is number 12. A fifth wheel operates the same as the so-called fifth wheel between a tractor truck and a semi-trailer. [43]

Q. It is a pivot—

A. It is an axis of articulation.

Q. Is it a vertical bearing and a vertical shaft and a vertical journal about which the structure 8 pivots when the wheel isn't driving—the steering wheel is concerned, is that correct?

A. Well, the bearing, of course,—its axis is vertical but its rotation is in the horizontal plane, but it is a thrust bearing in other words.

Q. In other words, the structure is such, in turning the steering wheel, which I will mark 13, the frame 8, rotates about axis 11, so that the front wheels 9 and 10, are turning to an angle—

A. They rotate all that—

Q. That track?

A. —that track that is at an angle to the axis.

Q. So now the weight of the structure is transmitted to the ground when it is travelling or resting and before any jacks are placed on it, along the axis 11 to the wheels 9 and 10? A. Right.

Q. And it will go there through the rear—

A. Suspension system.

Q. —suspension system, 4 to the wheels, through the axles 3, to the wheels 2. A. Yes.

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

Q. Will you put another 2 on the corresponding rear wheel.

A. O.K. and we will just mark them up here.

Q. All right and mark them on the top view too. Can you tell us, Mr. Woody, why you chose two sets of front wheels and two rear wheels for the truck assembly, instead of just two front wheels and two rear wheels?

A. You mean why we chose an oscillating front end?

A. Why did you select the particular construction, double, four wheels as I see instead of two front wheels as you did on one of your other structures?

A. This chassis arrangement was dictated by highway laws, in order to get the maximum carrying capacity permissible in the—or within the framework of existing highway laws.

Q. Is it correct then, that the weight of the structure was such that if you only used two front wheels, it would be too heavy a load?

A. You mean use this single axle?

Q. Yes.

A. That is correct, yes, for the unit we intended to produce.

Q. Is it true, or did you consider that the highway laws with respect to the total weight which is permitted on the front wheel assembly of a truck, do I understand these requirements to be that where you have two sets of front wheels, the loading upon

Plaintiffs' Exhibit No. 98—(Continued)
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the wheels should be such that the resultant load taken through midway between the two wheels, should have a certain maximum value? [45]

A. The way the highway laws are written, there is a maximum value for tires, there is a maximum value for a single axle, there is another maximum value for axles that are spaced apart.

Q. And those front axles, to which this maximum value applies, are supposed to be designed, are they not, so that each wheel will bear an equal load?

A. That is correct, approximately so.

Q. And that the net load, the resultant load on these wheels, should be exerted in a line midway between the axles of the wheel sets?

A. That isn't true.

Q. Tell us what is true.

A. The load—the center of the load application is not in the center of the two axles.

Q. Where is it then?

A. It is proportioned so that under maximum legal loading, the rear axle, which has dual tires on it, and hence the most equipment, will carry 18,000 pounds. The proportion that is left over of that legal maximum will be carried on the front axle. In other words, what it actually is, is a 25-35 arrangement.

Q. I said practically equal. A. Yes.

Q. But the weight is greater on the wheels 10, than on the wheels 9, is it not? [46]

A. Right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. So then the line of load application is to the left of axis 11, as we see it on exhibit 3.

A. Right. That is, axis 11, to state it correctly, is to the left of the center line of the axis. Axis 11, which is the axis of load application, is to the left of the center line between the two axles.

Q. Will you draw a center line between the two axles?

A. Well, it is approximately I would guess up about there—not quite either—that is awful close to it.

Q. This is the physical center line between axles 7 and 6, you are now marking— A. 14.

Q. —you are now marking that center line as 14? A. Yes.

Q. All right. Therefore the line of load application of the weight of the unit upon the bogie assembly 8, is along line 11, which is to one side and to the left as viewed, of the physical center line 14, line midway between the axles 6 and 7?

A. Correct.

Q. Will you draw a number 6 to the axis point please? A. Right.

Q. Now, we drew 13 as the steering wheel, and will you put a notation on the cab as 15, and mark 16 as the side windows, and the back of the driver's seat and where the driver sits, [47] that is 17 and 18. The back is 17.

A. And the seat cushion?

Q. Yes, where the driver rests his weary self.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. There is the cushion, number 18.

Q. All right. Now, in the structure shown here, what is positioned inside of the cab?

A. Just the steering controls for highway operation.

Q. Yes, so the driver sitting in the cab can drive the unit? A. The vehicle, yes.

Q. Does he have the controls for lifting the derrick and so forth? A. No.

Q. Does he have any control for operating the winch?

A. No, he has just his steering controls.

Mr. Crowley: I assume he has some control over the driving of the device, the motive power?

The Witness: That's right, but just as it affects highway operation.

Mr. Crowley: Only highway operation.

The Witness: He can't do anything else in there. You have to come around back here to do that.

Q. Now, what I see is a telescopic derrick, mounted upon this truck chassis, is that correct?

A. That's right.

Q. Will you mark the front legs of that derrick with the next number. [48]

A. This would be 19.

Q. That is, you are marking the lower end of the front legs, aren't you?

A. 19 here, and 19 here and number 19 here. Now then we can make 19-A for the front legs, upper section.

Plaintiffs' Exhibit No. 98—(Continued)
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Q. That is the section that telescopes inside of the outer section? A. Right.

Q. Will you tell me what this member which I am marking as 20 is?

A. That is the rear legs of the lower section.

Q. Will you mark the rear legs of the lower section.

A. The rear leg is number 20, it is right directly behind there.

Q. Have you any rear legs of the upper telescopic section?

A. Yes, sir, right here. This will be 20-A.

Q. Now, is there any cross-bracing provided between the front and rear legs of the outer section, which you have identified as 19 and 20?

A. Well, this was typical—

Q. Will you mark the typical bracing?

A. That would be 21. Now, this is the lower section.

Q. We are taking the lower section first.

A. Here is 21, here is some bracing, and of course, this is also additional bracing here. [49]

Q. I am going to mark two units 2 here, which are transverse members connecting 19 and 20, is that correct?

A. That's right, those are the members in the girth at that point.

Q. Is the section defined by 19, 20, 22, and cross-bracing 21, are they properly considered panels?

Plaintiffs' Exhibit No. 98—(Continued)
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A. Panels or the area in between is a bay,— panel or bay.

Q. There are a series of such panels and bays along the side of the derrick, which appears on the drawing exhibit 3, is that correct? A. Yes.

Q. And there is equal construction on the opposite side of that structure? A. That's right.

Q. Which would then appear in the plane shown to the right or front view of figure 3?

A. That's right.

Q. What is the construction on the bottom here, which runs perpendicular to the plan of the side view appearing on figure 3?

A. It would be in what we would call a back panel.

Q. A back panel of the same construction?

A. It is similar. Right here in this bottom bay it varies.

Q. That is the lowest bay? A. Yes. [50]

Q. Will you mark the bay you are talking about as A?

A. Well, here, you can do it this way, A. Now, that has special construction, in that there are members along here, that have diagonal bracing between them that straddle the cab.

Q. Can you identify that in one of the other drawings? A. We can mark it up here.

Q. You are now turning to page 1818 of plaintiff's exhibit 2? A. Right.

Q. The first structure shown on the extreme

Plaintiffs' Exhibit No. 98—(Continued)
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right in the erect position, is the same derrick as illustrated on figure 3?

A. Essentially the same.

Q. Will you go ahead and describe it. We are now seeing what you called the back bay—what did you call that now? A. The back panel.

Q. The back panel.

A. Now that particular structure—

Q. What are these little marks you are drawing?

A. Well, the bracing that goes in there. That one is modified. These may not be precise, but these illustrate the principle of the section. Then the bracing above that point has another member that comes from here up to there. Now this is the modification of the back panel, so that it will straddle the cab and essentially, the actual construction,—this is preliminary,—this cab isn't exactly like that. It is set back here. [51]

Q. You are talking now about figure 3, the position of the cab?

A. Yes. It is actually set back there and doesn't extend up quite as high as shown in this illustration.

Q. It doesn't make much difference.

A. No, it doesn't make a great deal of difference.

Q. So that the figure 3 shows a cab a little too far forward, and the top of the cab a little higher than it is actually constructed and built?

A. Yes, that's right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Which you do not consider of any essential difference? A. No.

Q. Now, I am afraid the markings that you made for me in red won't reproduce. Will you please be so good to convert them in the same markings with a dark pencil so that they will reproduce?

A. I don't think that is going to reproduce either.

Q. Why not use ink? You have now marked in ink on page 1818, over the red lines, the extra bracing, which is introduced into the structure shown on page 1818 as is actually employed in the structure shown in exhibit 3, is that correct?

A. In the back panel, bay A.

Q. Bay A? A. Yes.

Q. The other bays in the structure have the cross-bracing [52] as illustrated in 1818?

A. That's right.

Q. The rest of the structure of the derrick is the same as shown on page 1818 of exhibit 2?

A. Yes, that is essentially true. From time to time if we run into a little interference, we may convert some of those members, but essentially it is the same.

Q. Now, will you describe how that derrick is mounted on the chassis frame?

A. There is a frame work that carries those hinge members.

Q. Mark the parts as you refer to them. Where are we now in numbers? 23 is correct.

Plaintiffs' Exhibit No. 98—(Continued)
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A. Number 23, which shows here and here, is a supporting structure which is a part of the chassis, which carries the hinge member.

Q. Will you mark the hinge member here.

A. It is this area right in here. There is one segment of it, and 24, that is right in here. Here is a part of it.

Q. Is that a hinge panel for the mast?

A. Hinge panel for the mast. It is a sleeve type bearing.

Q. That is the upper half, and the lower half is marked 24-A.

A. Well, the dividing line doesn't show here. Actually there is a split—

Q. You are marking the split, a horizontal line, as 24-A. [53]

A. Now 24 is the removable part of the hinge as it is now marked, and this is a part of the framework.

Q. Will you mark that as 24-A?

A. Right below the line is 24-A.

Q. And that is the lower section of the hinge?

A. Yes.

Q. And does 24-A and 24 form a bearing in which there is a shaft? Is that correct?

A. Which is a part of the derrick.

Q. Will you sketch in the shaft.

A. Well the arrangement—let's see now—

Q. You are now sketching the arrangement of the shaft?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. That is correct. Of course, there is other structures in there, but let's make this 25.

Q. Mr. Woody may I help you,—not to help you but to ask you whether 25 is composed of a tube?

A. That is a tube, correct. That is a structural tube on the derrick.

Q. A structural tube that extends clear through and joins 20? A. That is correct.

Q. Is welded to 20? A. That's right.

Q. And the tube is carried on a frame work shown as 25 and 25-A and 25-B.

A. That forms the truss there. [54]

Q. With diagonal 25-C, that forms a truss which carries a tubular member, which is welded to 20, and which is pivoted in the bearing 24 and 24-A?

A. Right, but actually the bearing, there is a sleeve in there, then some gussets that aren't illustrated, in bronze bushings inside that bearing.

Q. But essentially their purpose is to provide a bearing, through which a pivot shaft passes, so that the derrick can rotate about an axis. Will you please mark the axis of rotation.

A. This will be 26, right there.

Q. Will you mark the axis of rotation as 26 on the other front view. A. Right.

Q. Now, Mr. Woody, the truss 23, would you please mark the other side of the structure with the same equivalent number. You are marking it 23 and 23-A. This truss member is carried on the chassis frame, is it not? A. That's right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. By means of gussets. Will you mark the gussets. You are marking as 23-B the gussets upon which the truss 23 is mounted upon the chassis frame, is that right? A. Welded to the frame.

Q. Welded to the chassis frame, and will you mark the chassis frame there on the view upon which you have marked [55] 23-A and 23-B.

A. Of course, you understand this is all welded together, but this is essentially—

Q. This would be the one you are marking 1?

A. Yes, the end of the frame member.

Q. The end of the chassis frame member?

A. Right.

Q. To which the structure 12 and 8 is attached?

A. Well, 12 is attached, but 8,—see the frame work here and there is a bearing between them.

Q. Well, let's say it is carried then.

A. Right.

Q. Or mounted,—carried or mounted.

A. Yes.

Q. I see a trapezoidal section which I will ask you to mark 27, and will you also mark it on the other view. Now that trapezoidal section is mounted upon the frame work 1, is it not? A. Right.

Q. And upon which the so-called fifth wheel 12 is located, is that correct?

A. Right. It is the load transfer member.

Q. Which transmits the load from the chassis frame to the wheels?

A. Through the fifth wheel. [56]

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Through the fifth wheel to the wheels 9 and 10? A. Right.

Q. Look at the truss members 23. I will point out a member which I will mark—the inner diagonal member 23, which I will mark for this purpose 23-C. Do you see that member I am marking 23-C?

A. Right.

Q. I notice that forms a triangle which frames the front cab window—

A. There wasn't any front cab window, just the side.

Q. —which would be 28, is that correct?

A. Right, in the front view it does.

Q. It is not shown in the side view?

A. No.

Q. Now the 28 is thus framed, is it not, by means of the members 23, including 23-C and the member 25? A. Correct.

Q. And the space between 23-C and 25 forms a window or porthole through which the driver can look, when he is driving. A. Correct.

Q. Now the members 23-C and the other member 23 which is the—well, let's put it this way, members 23, including 23-C are in the same place, are they not? A. Yes, correct.

Q. The plane being slightly to the perpendicular as shown [57] in the side view.

A. Right. I don't believe it is straight up and down. I think there is a little over two inches of slope.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Now the axis 26 is a reaction point, is it not?

A. Right.

Q. What is it a reaction point to?

A. It is a reaction point through which all loads are transferred between the derrick structure—and I shouldn't say all loads, but it is a reaction point of transference of load between the structure load and the chassis frame.

Q. Will you tell us the members through which the load is transferred to the ground? Will you trace those members?

Mr. Crowley: May I say at this point, he mentioned the frame. Mr. Woody's answer to your prior question did not mention the ground.

Q. I am now asking him to trace the members.

Mr. Crowley: I just want to clarify the question.

A. In actual practice there are—which are not shown here—outriggers—

Q. Mr. Woody, I apologize to you, the question was not definite and Mr. Crowley is correct in calling my attention to it. I am now concerned with the structure in its roadable position.

A. In its roadable position, O.K. As a matter of assumption, which isn't quite correct, the load of a portion of the [58] derrick is transferred, that is the dead weight of the derrick and any accessories that may be carried on the derrick, a portion of that weight is transferred through the hinge bearing down to the chassis frame and—

Q. Through what members?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. Through members 23, through—

Q. I notice there are two 23's in the side view.
You mean through both members?

A. 23 was originally used to describe the complete truss of course that carried the derrick. Now in the case of pure vertical loads, the vertical portion of 23 is the only one that will be affected.

Q. The weight portion being 23-D, is that right?

A. Right, it will be the only one affected, if it is pure vertical loads, but in actual loading operations there are forces fore and aft, and to one side or the other, on account of unevenness and changing course and one thing and another.

Q. So some force or load may be transferred through a member which I have now marked 23-E, is that right?

A. Right, slight, but there will be some.

Q. The majority of the load is transferred to 23-D— A. Right.

Q. —to the frame, member 1?

A. Right.

Q. Will you trace the transference of the load from the frame [59] member 1 to the ground?

A. The load comes through member 23-D and directly into that portion of frame member 1 underneath it, travels along the axis of the frame member 1, and as it travels it is distributed over the—I believe we called it a trapezoidal section.

Q. Which we marked 27.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. 27, and eventually ends up by being transferred to the front chassis assembly, along axis 11.

Q. To 8? A. To 8, along axis 11.

Q. From then it gets into axles 6 and 7—

A. Right.

Q. —and through the wheels to the ground?

A. Yes.

Q. And the springs, that is part of the transference of that load. A. Right.

Q. Will you mark the springs.

A. The only place they show would be in the front view, and that is 29.

Q. Are there springs that extend between axle 6 and 7? A. They are individual per axle.

Q. Then they are coil springs?

A. They are leaf springs. [60]

Q. Individual for each axle?

A. That's right.

Q. Then the force which is transmitted along the axis 11, is transmitted through member 8 to the springs 29, and through springs 29 to the axles 6 and 7, and thence through the wheels to the ground?

A. Right.

Q. Let's draw a perpendicular line through the hinge 26. Mr. Woody you are a much better draftsman than I am. A. This line here.

Q. Let's mark that as what?

A. 30 is the next number. Should we put line 30?

Q. Mark the 30, I think that will identify it enough. A. All right, 30.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. The location of line 30 with respect to the end of the chassis 1.

A. It is set back in actual practice, just far enough so that one part of the hinge member, that is the hinge cap, extends beyond the front of the chassis, beyond the thirty-five foot road limit. That is what governs the location of that.

Q. Mark the front of the chassis beyond which the cap 24 does not extend.

A. It extends slightly—this line here, this is the front of a single unit chassis. [61]

Q. Let's mark that with a 31.

A. That line represents the extreme, 31.

Q. The extreme front end of chassis member 1?

A. Right. Now that line there is short of being thirty-five feet from the extreme rear of the single unit, as defined in the law, so that lips of the hinge cap, extend a fraction of an inch beyond that, so that they are within the thirty-five foot limit.

Q. Extend a fraction of an inch forward?

A. Yes.

Q. So that the line 30 is set back toward the rear of the vehicle and intermediate the ends of the chassis being a distance of a fraction of a foot between 30 and 31? A. Yes.

Q. How many inches would you say?

A. I believe it is 2-11/16 inches, or something of that kind.

Q. What is the horizontal distance between line 30 and line 11?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. This is approximate. It is approximately to the best of my recollection, $15\frac{1}{4}$ inches.

Q. What is the distance between the line 30 and the vertical line drawn through the center of axis 7?

A. Well, that is—the distance between 11 and 7 is 35 inches, so that would be slightly less than 20 inches, by that fraction. [62]

Q. The front of the member 8, forms a bumper, does it not? A. Right.

Q. Where does the front end of member 8 terminate?

A. It terminates—well, the bumper is just a little over the end of it, so that it is a quarter of an inch back, or three-eights, or whatever the thickness of the bumper is, back from the front face of the bumper.

Q. Will you mark that as 32.

A. The bumper?

Q. The front face of it. A. Right.

Q. You have not dotted in the front view of member 8?

A. Yes, this is still 8 here. That would be 8.

Q. All right. Now, Mr. Woody, we have used the word roadable position. When we say a roadable position, what is meant by that term?

A. Roadable?

Q. Yes.

A. The roadable position or loading position is the attitude of the structure, the derrick structure.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
You see you are talking about the derrick structure
as it is transported over the highway.

Q. That is shown in a side view on exhibit 3?

A. Right.

Q. Except that the jacks which I will mark as
33, are [63] removed and are not in position as
shown? A. That's right.

Q. Now, going back further, you have a mecha-
nism for lifting the derrick toward the vertical?

A. Right.

Q. And into an erect position. A. Right.

Q. Will you show us the structure that does that
job?

A. It is just shown in side view here, that would
be cylinder 34.

Q. The structure to which you refer is also
shown in exhibit 1, is it not? A. Right.

Q. Will you point that out?

A. This particular unit is right here.

Q. Will you mark that. You are marking it as
34 on page 1883, is that correct?

A. Yes, that is this cylinder.

Q. Mr. Woody, it is my experience that these
things don't reproduce too well. You are now mark-
ing the 34 in ink now, are you not?

A. Right.

Q. Now that unit, it is a multiple stage—

A. Hydraulic ram.

Q. Double acting, or multistage as you call it.

A. Right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. The outer cylinder of the member 34 is pivoted at its end upon the chassis frame 1, is it not?

A. Right.

Q. And the ram or piston of the cylinder is pivotally connected to the back legs 20 of the outer section of the telescopic derrick, is that correct?

A. Correct.

Q. Will you mark the hinge point?

A. The hinge point where it is attached to the derrick?

Q. Yes.

A. That would be 35, that is hinge pinned right there.

Q. Now will you mark the axis of pivot of the member 34. Mark it with a number 36.

A. Right.

Q. All right. Now that cannot be seen on the front view, can it? A. No.

Q. It is hidden behind what now?

A. It would be back of the rear wheels, and it would just confuse the front.

Q. I see. It is omitted for the purpose of clarity.

A. That's right.

Q. And it would be in line with the rear wheels?

A. It is approximately on the line of—it is not quite [65] on the line of the—its center line is slightly inside the center line of the outer dual wheel.

Q. Will you mark a line showing the outer limit of member 34, below the pivot point 36?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. The outer limit is just—it is just inside the eight foot limit—

Q. You are marking the eight foot limit now, are you? A. Yes.

Q. By that you mean?

A. Eight foot road limit.

Q. In other words, the distance between the line marked eight foot road limit—will you mark it on both sides?

A. Right here. Approximately there.

Q. That mark, that is eight feet between these two lines? A. That's right.

Q. That you have marked eight foot road limit?

A. Right.

Q. Now there are two such members 34, one on each side? A. Right.

Q. Each being connected in the same manner?

A. Right.

Q. Can you tell us the distance between line 11 and the vertical line passing through the axis 36?

A. Not offhand. I can get that.

Q. Is it roughly in the ratio shown on the drawing? [66]

A. Right. As I recall, probably from the front of the chassis frame there would be about 98 inches, or maybe it may be more than that, but it is around 98 to 104 or 105 inches from the front of the chassis frame to that station there. I have a recollection that this is 16 inches off of vertical.

Q. When you said 16 inches you meant—

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. The axis between the hinge points.

Q. Hinge point 35 and 36, is 16 inches?

A. Right.

Q. Measured in the horizontal direction?

A. Right. That is my recollection.

Q. Can you tell me the distance between the hinge 26 and the roof of the cab 15, measured in the vertical direction? A. No.

Q. You stated that as actually constructed the roof of the cab 20 was below the hinge 26.

A. I think we have a little more layout. That is partially complete.

Q. Can you show us that, if it will help you any.

A. Yes, I think I can find a print of that. [67]

* * * * *

Q. Tell me this, what is the relationship between the hinge 26 and the top of the head of the driver?

A. I think we have that on one of these other prints. I believe we have. His head is below that. Here is the actual construction here.

Q. You have the detail of a hinge construction with relation to the cab, which is shown on a drawing which has no number, but which we will now mark as exhibit 23. That shows hinge and derrick construction that is shown in exhibit 3, is that correct?

A. Yes, of the hinge construction. It is a detailed layout of the installation of the hinge.

Q. That is drawing exhibit 23.

A. Exhibit 23 which is a detailed layout of the

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
derrick hinge installation, and it is to the best of
my knowledge essentially correct, as it was con-
structed.

Q. Now the top of the head of the driver would
be below the top of the window, which was marked
16 on exhibit 3? A. Right. [68]

Q. And the top of the window we will mark as
16-A on exhibit 23.

A. His position is such that he can see out of
there. There may be a portion of his head above
that line, but how long is a man when he is sitting
down? He will sink down in the seat a couple of
inches.

Q. Normally he looks out this window?

A. Sure.

Q. So he can see out that window, is that cor-
rect? A. That's right.

Q. Without stooping?

A. That will be about 37 inches or more, from
where he is sitting, from a folded position.

Q. Line 16-A will be 37 inches from where he is
sitting? A. Yes.

Q. And the construction is such that the back
legs—

A. They are above his line of vision.

Q. The back legs 20, are above his line of vision
and straddle the cab, is that right?

A. One leg is on one side of the cab and the
other is on the other side. The outside legs on the

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

eight foot road limit and the cab is considerably narrower.

Q. Mr. Woody, will you mark the end of the front legs 19?

A. Well, this right here. This is the end of the leg. That is, there is a nut but it is welded and to all intents and purposes it is the end of the leg.

Q. Give it a number. What is our next number?

A. 37. Now that leg ends—let me see now—that ends actually, although this construction doesn't show it, this red line here, that I will make a double red line, and we will mark that 38. That is the end of that leg.

Q. Will you state what this diagonal member between 19 and 38 is?

A. That is a brace member, that under certain conditions of operation, may transfer the load from the rear legs to the supporting jacks.

Q. Supporting jacks are marked as what?

A. We will make them 39.

Q. Will you mark the diagonal member to which we referred, as 40? A. Right.

Q. Do I understand, these are the jacks which when a derrick is erected vertical will extend to reach the ground? A. Right.

Q. Mark them. A. They are 39 here.

Q. Showing the dotted structure to which this is attached as the phantom view of the position of the derrick when erect? A. Right.

Q. What is that block that I see below there?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. That is just a base plate to give more [70] area.

Q. Will you mark that as 41? A. Right.

Q. Now you have a winch shown, have you not?

A. Right.

Q. Will you mark that generally the next number 42.

A. Put an arrow from here to there.

Q. I think if you just mark it generally as 42, and that the outline of that is shown in lines 43, is that correct? A. Yes.

Q. That outline is sort of a cover that covers the hoist? A. That's right.

Q. And that is shown on page 1883 of exhibit 1. Will you mark that exhibit 1, will you mark the structure of the hoist 42. All right. That extends across the chassis frame 1, does it not?

A. That is the area.

Q. That extends across the transverse extent of the chassis frame? A. Right. [71]

* * * * *

Q. It overhangs the frame about eight inches on each side? A. Yes.

Q. Mr. Woody, will you mark the surface, the exterior surface 42. A. Right.

Q. On the top view.

A. All right, 42.

Q. The chassis frame 1, over which it overhangs.

A. Right. [72]

* * * * *

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Can you locate for us the center of gravity of the winch? A. Not precisely.

Q. Roughly speaking it is somewhere between the hoist—

A. The drums and it would—and of course, it depends on what line you may have on the hoist. It will travel all the way from the left of the gear box from here to the right depending on the—

Q. But it lies somewhere between the axis of the two drums? A. That's right.

Q. Will you mark the axis of the two drums.

A. 44 and 45.

Q. The motor power, and also the hoist power is also positioned somewhere. Will you show us where that is?

A. It is towards the rear of the chassis.

Q. Will you show the limits of the position please?

A. Well, we can put a bracket here and call that 46, and the four and a half limits are included in that bracket.

Q. And the derrick rests also on a support on the rear end? A. Right.

Q. Will you mark that support for us?

A. That is 47.

Q. Taking the center line axis of the vehicle, as for example shown in the plan view exhibit 3, what is the relationship of the axis of the hinge of the derrick to that center [73] line? Would it be correct to say it is perpendicular to it?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. It is at right angles to it. As it you look at it here, it is perpendicular to it.

Mr. Subkow: Well, it is after five, this would be a good place to stop.

* * * * *

Q. (By Mr. Subkow): All right, Mr. Woody, in looking at the top plan view, there appears to be a discrepancy between the top plan view and the side view on the right. Would you please mark on plan view, the following members which appear on the front view. Let me put it this way. Does member 25-B appear on the top plan view? A. No.

Q. Will you identify there, Mr. Woody, the cross-member on which I have placed my pencil.

A. The way that section is taken, that represents the plane of— [74]

Q. 23-C?

A. —23-C and also behind that would be 23.

Q. Will you identify on the plan view 23 and 23-C.

A. They are all in this plane here.

Q. There is an error in that?

A. It isn't a complete projection. This just indicates—

Q. Will you complete that for us, so that we can make the top view consistent with the front view.

A. This, of course, is with the derrick lifted off.

Q. The top plan view has the derrick removed?

A. Right, so you can see underneath.

Q. In other words, the members 25, 26, 25-C,

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

25-B, 25-A, 19 and 20 are not shown on the plan view? A. They are not shown.

Q. The members 24 are also removed, are they not?

A. Well, yes. The hinges indicate it. It is not drawn in true fact there but it is indicated. Now then, if we were looking down on it from the top, actually there would be a line—

Q. You are placing a line in red pencil?

A. There would be a line here, where the two members came together—were welded together.

Q. The two members 23-C?

A. That's right.

Q. Will you mark that exhibit 23 prime? [75]

A. Right here?

Q. Yes. Mark the joining of the two members by 23 prime. Now the window which is shown in dotted line, would appear in full, would it not?

A. Well, actually it wouldn't. There is a discrepancy in the drawing there.

Q. Will you make that correction for us please.

A. The window—well, in fact, the cab, as pointed out before, the cab outline is towards the front, from where it actually is.

Q. Will you mark the cab outline on the top drawing? We have marked the cab 15. Will you mark the cab outline on the plan view by 15?

A. Can we refer to this other drawing here?

Q. You are now referring to another drawing?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. Yes. We had it here last night. That is a layout of that area.

Q. You are now calling for exhibit 23?

A. Right.

Q. All right. We have placed 23 before you.

A. Now, if we were to correct this top view here—

Q. You are now correcting the cab outline in the plan view of exhibit 3, to conform with the drawing exhibit 23, which you state shows the actual construction of the structure which was illustrated in exhibit 3, is that correct? [76]

A. That's right. Now then, the windshield actually is from here back to here.

Q. You are now outlining in red the windshield. Will you now mark that with the number 16 prime —no, I think you ought to change it, make it 28 prime. A. 28 prime.

Q. 28 being the window as shown on the front view of exhibit 3.

A. Yes. Now then, the top view as actually built, there are gussets, these are tubular members—

Q. "These" being what?

A. 23 prime are actually—

Q. You are talking about 23-C, aren't you?

A. 23-C.

Q. All right, mark 23-C.

A. 23-C will be these outlines here, conforming to this. Actually there is a gusset across here of some magnitude.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. That is the gusset which we have marked 23-A, haven't we?

A. Yes. Here is 23-A, and there is a second gusset back of that, which actually you can see that the member going down there is wider than this member across the front of the vehicle.

Q. You are talking about now 23-A?

A. Well, the front member of number 1, the chassis.

Q. All right. [77]

A. So draw that through, this gusset sets back in here, another gusset sets back in here, like that.

Q. Mark that other gusset as 23-B.

A. No, I think we have already used that.

Q. Yes, we have. Well, mark it 23-A prime then. All right. Will you mark the other member 23 that goes down to the frame. Now, will you tell us why this drawing exhibit 3, differs in the relative position of the cab from the exhibit 23?

A. Well, this was a preliminary drawing that was made up before the chassis was fully designed, and the position of the cab would have had no advantage and would have caused difficulties in construction, so that it was changed as shown on whatever this drawing is here.

Q. For convenience of construction?

A. Yes.

Q. But with respect to the utility of functioning of the structure, it made no difference?

A. No.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Whether it was in the form shown in exhibit 23 or exhibit 3? A. No.

Q. What is the relative dimensions of the truss members, composed of 23, 23-C as compared to members, of 20 for example of the outer section of the telescopic derrick?

A. Well, they are different types of material. As I [78] recall the member 23, the outer principal support member, is four inches square, where the rear leg of the derrick is a four inch round tube.

Q. Will you mark the members 23, on the exhibit 23, you are now referring to.

A. Right here, 23, 23. That is four inches square.

Q. The member 23-E—

A. Is also four inches square.

Q. The dimensions having been chosen for rigidity and ability to support the loads—

A. That's right.

Q. —on the rear legs? A. That's right.

Q. By the way would you put 23-E on exhibit 23, so we will know what it is. A. Right.

Q. All right. Now, Mr. Woody, the structure as shown on exhibit 3, is not complete is it, of the structure as constructed and sold? A. No.

Q. What is missing?

A. There are no outriggers shown.

Q. Have you any drawings that show the positioning of the outriggers?

A. Yes, we have. I can produce those. [79]

Q. You have now brought a drawing, entitled

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

Installation Outriggers, number 21-988, bearing date 9-1-53, which is the date on which this drawing was made.

A. Right, that is when it was completed.

Q. I notice that on exhibit 3, that we have a date of 9-3-50. A. Right.

Q. Is that the date on which this drawing was completed? A. That's right.

Q. And that was a date earlier than the first production of any Drive-In unit by Franks Manufacturing. The first Drive-In unit was made after 9-3-50? A. Right.

Q. Did the first Drive-In unit of Franks Manufacturing, contain the outriggers which are shown on the drawing 21-988?

A. Essentially the same. They weren't just precisely the same.

Q. This drawing, as all other drawings which have been introduced into evidence as exhibits, where you have said they represent structures made, are true and accurate reproductions of the structures as built and sold? A. Yes. [80]

* * * * *

Q. Let's mark this exhibit 24. All right. Mr. Woody, will you now mark on exhibit 24, the members 23 and 23-C, so that we will have a point of reference and comparison between exhibit 24 and exhibit 3. Now, will you describe the construction of the outriggers as shown on exhibit 24, marking the parts to which you have referred, by numbers

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
and explain the over-the-road position and the position of the outriggers when in use.

A. These outriggers over-the-road are foldable, as shown in the plan view above.

Q. Will you mark that generally, the plan view.

A. View A on the left side, and it is shown unfolded in View B on the right hand side of the plan view, and then in the lower part of the drawing, there is a front view that shows the complete system which, when the outriggers are extended, forms a continuous truss between the two widely spaced jacks that transfer any loads to the ground.

Q. Will you mark the jacks by number please?

A. A new set of numbers?

Q. Well, let's start with 101 on this.

A. O.K.

A. Right, 101.

Q. Now the jacks shown on the lower section of the drawing on which your number 101 appears, correspond to the position [81] of the outriggers shown in View B, is that correct? A. Right.

Q. Well, continue with your description please.

A. Now, then, these outriggers are used to stabilize, give a wider base and stabilize the derricks more than is possible with jacks set within the eight foot limit, and they are made foldable, so that you could still travel over the road, conforming to the eight foot road limit.

Q. This foldability is provided by hinges?

A. On the outrigger itself.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Will you mark the hinges?

A. 102 is here and 102-A.

Q. It is equally so on the opposite side, is it not?

A. Right.

Q. There is also a hinge of some sort?

A. In the brace member.

Q. In the brace member. Will you mark the brace member with another number and the hinge that appears on it.

A. The brace member number will be 103 and the hinge will be 103-A.

Q. Will you mark the corresponding parts of the folded section of View A? A. Right.

Q. Now the truss which you have described, shown in vertical view on the lower section, is composed of a triangle, is it not? [82] Will you mark the parts of the triangle.

A. The truss is composed of members 104, 105 and actually—

Q. Member 23, is that correct?

A. Member 23, 23-C and going back to the other drawing, member 25.

Q. Which also appears as 25 on exhibit 3?

A. Right.

Q. I believe 25-B.

A. No, right here, — which forms a complete truss all the way through from one side to the other. Of course, additionally the front panel section of chassis frame 1, is also a part of that truss.

Q. Now, does the brace member 103, have any

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
functional relationship to the truss which you described?

A. The only function it has is stability.

Q. Stability against the displacement in the plane of the plan view?

A. That's right, fore and aft in the plan view.

Q. Now, there is a member here, on which I have put my finger, that you have not yet referred to. Can you identify that member and give it a number?

A. Number 106. Its function is maintaining the geometry of the outrigger truss members before assembly.

Q. Is it welded to 104 and 105?

A. Right, but it is not a load member. [83]

Q. It is not a load member, because whatever load in that direction is imposed, is carried by the member 23, is that right? A. Right.

Q. Referring back to exhibit 3, can you give us the distance from the top of the cab to the ground?

A. It is approximately 98 inches.

Q. That is pretty nearly standard for all trucks, is it not?

A. Yes, it runs about eight feet, more or less.

Q. But that is pretty much the generally accepted standard for trucks of all kinds?

A. Yes.

Q. There are some dimensions given on exhibit 3. Are those dimensions accurate and employed in the structure as manufactured and sold?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

- A. The front overhang is accurate.
Q. You mean that three feet?
A. Three feet zero.
Q. That is the distance between point 37 and the bumper? A. That is right.
Q. Which you described before.
A. And that is necessary to conform to highway regulations. The overall length of the vehicle is substantially correct.
Q. That thirty-five feet also represents the legal length? A. Yes.
Q. It must not be longer than that? [84]

* * * * *

- Q. Now, we have described a structure up to now, in the position in which it travels over the road, have we not, Mr. Woody?

- A. That's right.
Q. Now, tell me what happens when you drive into a location. Describe the procedure. You are now a truck driver and you are coming into a location.
A. You drive in in the same direction that you travel down the road, and drive in to a measured distance, generally from a point on the front of the vehicle to the polish rod or popping gears, and after you line up the vehicle and stopped it at the proper distance away from the well head, the next thing is to unfold the outriggers and then by placing suitable matting,—the matting that is used will be dependent upon the [86] type of location and the firmness of the footing.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Just a second, Mr. Woody. Let's see if we can find something here. May I see exhibit 2 please? I refer to page 1812 of plaintiff's exhibit 2, the lower left-hand corner, which says Clipper Outriggers, patent applied for. Do you notice that?

A. Yes.

Q. Will you continue your examination, using this photograph as well?

A. Well, in this photograph the outriggers have been unfolded and the matting, or blocking, has been placed under the jacks.

Q. Jacks 101?

A. 101, to give greater contact area, according to the firmness of the support.

Q. By the way, that photograph is a photograph of the unit shown in exhibit 3, is it not?

A. I could not identify that. It is substantially the same.

Q. As far as the front view is concerned. The structure shown there is the same for all forms, is it not? A. That's right.

Q. Of the three forms we have been talking about?

A. Yes, and these outriggers have been placed in contact with the ground and we could assume that they have also unfolded the jacks under the—

Q. We will come to that, but before we get to the jacks, you [87] are talking about the jacks 33?

A. Jacks, 33.

* * * * *

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. All right go ahead, Mr. Woody. You said you can assume that jack 33 has been placed. Will you tell us how jack 33 is placed?

A. It is similar—now, it is normally carried folded against the side of the frame. It is actually hinged to the frame. There may be a closer photograph here. One of these should show it.

Q. Well, perhaps we can expedite this by—

A. There is one of them that they didn't get quite removed, there is one there, then there is another? See, that is folded up there. There is a hinge. That is a jack.

Q. You are pointing to exhibit 2, page 1807.

A. Yes. Let's see this front view—no, they are covered up.

Q. You are looking at the front of the catalog, exhibit 2. A. There is one.

Q. You are pointing to some structure which is [88] adjacent to the rear wheels.

A. Just ahead of the rear wheels. The fact of the business, that is shown on the cover.

Q. Mr. Woody, that is very unclear, is it not?

A. That's right.

Q. Well, can we go this far that—

A. We can mark the location on here.

Q. Well, we will do it simpler than that. Can we say that it is similar to the construction shown on figure 6, of the Moon patent 2 671 537, if not identical?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. No, it is not the same. These jacks in effect, they are not braced like those.

Q. They are not braced? A. No.

Q. But I mean as far as being carried on a frame,— A. They are carried—

Q. In a similar way?

A. Yes, they are carried on the frame, but they are—there is a hinge, a fore and aft hinge, whose axis is fore and aft, and it swings them in position under the frame, then when you release the jack, you can swing it back.

Q. Swing it back over the frame alongside the cylinder 34?

A. That's right, and just behind it.

Q. On the inside of the frame?

A. On the outside. [89]

Q. On the outside of the frame. You swing it in position, then what do you do?

A. Then if the foundation, or the soil isn't firm, you block up, lay a matting to distribute the load.

Q. How do you screw up the jack, to what degree?

A. Just sufficient to begin to take the load off of the frame unless—now, unless the frame is out of level and there are levels on the frame to check its position, and in case the frame is out of level, you jack up one or the other side to level it back up.

Q. In other words, the jacks are just brought up within a height to take any material amount of load off of the vehicle. A. Right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. What is the relation of jack 33 and axis 36 of the lifting jack 34?

A. They are adjacent. They are not in line, but any loads applied along the axis of the ram 34, would travel a very short distance through the frame before they were taken out in through the jack to the ground.

Q. By the way, this mounting of 34, is not shown too correctly—too clearly rather, in exhibit 3.

A. It is a trunnion mounting, all the way through the frame.

Q. On some axis? A. That's right.

Q. Which transmits the thrust from the trunnion 36 to the frame? [90] A. That's right.

Q. And it also permits it to pivot?

A. Permits it to pivot, but forces both cylinders to pivot together.

Q. I see. They are connected together. The trunnions are connected by a shaft which runs across the transverse extent of the frame and is connected to each cylinder 34 on each side? A. Right.

Q. Now proceed. You have now adjusted the jacks 33, and then what do you do?

A. There is another set of jacks, there is a third set we can put in here in red pencil. They are in this area. We will just say, something like that. That is a pretty good jack if I do say so myself.

Q. You have now drawn in a jack in the rear in red pencil. Will you put a number on that? Why don't you just mark it 33-A? A. All right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Go ahead with your description.

A. All right. The back jacks are put down at the same time that 33 are put down.

Q. All right.

A. And if any levelling is necessary to be done to level the frame itself, the jacks 33, 33-A, and of course the outrigger jacks have to be adjusted likewise. [91]

Q. Now, when you adjust your jacks 101, do you take any of the weight of the structure under the jacks and off the springs? A. We do.

Q. So that what you really do, you lift all the load of the structure off and the structure is now weighted on to these jacks 101?

A. A good portion of it is.

Q. How do you know when to stop?

A. Well, there is no positive criteria, but the springs only have a couple of inches of differential in their load, and if you raise those jacks about one and a half inches, you will have good, sufficient weight on the jack to stabilize it.

Q. Will you locate on exhibit 3, the axis of the jack with relation to the side view?

A. The axis of the jack is in the plane of the center line of the hinge 30.

Q. Now then, so that that extends the truss, composed of 104, and 105, extends perpendicularly to the plane of the side view? A. Right.

Q. All right, proceed with your procedure now.

A. Once all the jacks are placed and tightened,

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

—that is if any lines which must be uncoiled or anything which has really nothing to do with the raising operation, after all [92] interfering parts have been removed, you are set up to raise the derrick.

Q. All right.

A. You have your base and it has been levelled. Then in the case of this unit, you go back of the draw works, where you are at a point of better vision and greater relative safety, and there is a control box back there that houses the derrick controls, and from that station you proceed to raise the derrick, and until such time as the structure is tilted by a predetermined amount, on the structure there is a tilt indicator which registers the degree.

Q. Indicates the angle of alteration to the vertical or horizontal? A. Right, to the vertical.

Q. To the vertical. Let's go back to the starting of the raising of the derrick. This is done, is it not, by introducing fluid under pressure in 34 to extend the ram? A. That's right.

Q. The ram is extended, the ram pivots at 36 and 35? A. Right.

Q. And the structure pivots at 26?

A. That's right.

Q. As it is raised, where are the reaction points? First will you tell us what we mean by reaction points?

A. A reaction point is a point at which a load is resisted. [93]

Q. All right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. The external reaction points are in the derrick hinge.

Q. Number 26?

A. 26 and the fulcrum end of the ram 36.

Q. And from the fulcrum end of the ram 36, it goes down through the frame 1, to the jacks 33, and to the ground? A. That's right.

Q. With respect to the reaction point at 38, will you tell us what happens to the load that is thus experienced at 26?

A. Initially that load is upward in a vertical direction, or largely in a vertical direction, and as the raising process progresses—

Q. In other words there is a force vertical along the axis 30? A. Right.

Q. Opposing the downward force through axis 36? A. Right.

Q. What happens to this member there, in between those two lines?

A. That member must absorb that load in bending.

Q. Go ahead.

A. Now then, as the raising process progresses, the character of the load on the hinge—well the hinge is—

Q. We have marked the axis 26.

A. —axis 26 changes from an upward load to through zero to a downward load. [94]

Q. In what position in the raising of the derrick, does a downward component or force happen?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. As I recall, it begins when the derrick is within six or eight degrees from reaching the vertical.

Q. You mean the perpendicular position?

A. Well, you asked—correction—you asked this, from what position from downward or from upward to downward?

Q. Yes, sir.

A. Without going back through some of the layouts, I couldn't give you an exact attitude, but it changes from upward to downward in the near area of where the force on the ram, as it approaches the weight of the structure.

Q. Isn't it true that the point of change is when the center of gravity of the derrick falls between hinge point 35 and the axis 36?

A. That would be very nearly true.

Q. Yes. You have such studies of this thing?

A. Yes.

Q. From which the exact point could be determined?

A. We have the anticipated raising pressures.

Q. And can that information be made available to us? A. I think it can be.

Q. Not at this very moment, but perhaps during the lunch time. From that point on, from the point where the center [95] of gravity passes in between these two hinge points, the force at axis 26 is downward? A. That's right.

Q. And that is absorbed by member 23 E and D?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. That's right.

Q. And transmitted to truss member 1?

A. Right.

Q. When that force is exerted, will you tell us what the condition of the member chassis 1, between hinge point 36 and the line of application of that force at 30?

A. At that time the load gradually reverses and you have a downward thrust.

Q. A downward thrust along the axis 30?

A. Right, and to begin with there is still a downward thrust along the—on point 36.

Q. Yes. A. And eventually—

Q. In that condition, the chassis member 1 is not bending, is it?

A. At that particular time the load in the chassis or member 1 is zero. For a time it goes through a condition of zero load.

Q. Then increases in bending as these loads increase?

A. No, it does have a bending load in a reverse direction. The direction of bending reverses over that initially. [96]

Q. Yes, because the direction of the force factor, when the center of gravity is outside the position of the hinge members 35 and 36, creates an upward thrust, therefore, the direction of bending is determined by these two opposite forces?

A. That's right.

Q. But when the force factor along line 22 re-

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

verts and becomes down, the direction of bending is reversed. A. Right.

Q. So that we can make the bending moment diagram—could you sketch in there the bending moment diagram under that condition?

A. As it goes—

Q. When the center of gravity is such, as to create a material downward moment force along 30.

A. Your maximum moment of course would be—as far as the frame is concerned, would be back at this point here, and it would taper to zero at that point, and it might be represented to go down here by a line—

Q. Wait a minute. I don't think we will be able to see it. Let's draw it in a little heavier.

A. And assuming the ground line is your zero—

Q. The ground line is the zero bending moment.

A. Right.

Q. We will mark the triangle which you say is the—

A. This is substantially straight. [97]

Q. We can draw a triangle at the bottom of the exhibit 3, which represents the bending moment diagram in the frame member 1, the maximum height of the moment diagram being a line 36 and the zero bending moment being a line with 26. Then can we now write in Bending Moment Diagram at the bottom?

A. Should we just cross cross that?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. You are cross crossing the area which represents the bending moment.

A. Now then, since all jacks are down rigidly or firmly on the ground, and overall you have a center of gravity shift towards the front, which means that when the complete system is following through, that as the derrick goes forward, the load on the outrigger jacks increases.

Q. That is, as the derrick is being erected, because the center of gravity is moving forward more, and more weight of the derrick is moving forward?

A. That's right.

Q. And therefore, the front end of the structure is being loaded more and more, consequently the jacks, which help to support that structure, carry more and more of that load.

A. Right, and the bending moments in this area of the frame are a localized system, that doesn't affect the character of the load that goes on the extremes—

Q. On the back end?

A. —on the back end and after the initial phase of rasing, [98] the load settles back on these front outriggers.

Q. Let's follow this a little more. Now, as we move to the perpendicular— A. Yes.

Q. —so that the center of gravity is now on the axis 30? A. Right.

Q. The full weight of the structure is exerted along axis 30. We have located in this hypothetical

Plaintiffs' Exhibit No. 98—(Continued)
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case, that the center of gravity is all now on the
axis 30? A. Yes.

Q. So then the full weight of the structure is
now carried on members 23 and 23-E, is that cor-
rect?

A. As a stabilizing member, right.

Q. And then carried to the outriggers?

A. Right. Now then, the bending that exists in
the frame, when the load becomes negative on the
ram—

Q. When does the load become negative on the
ram?

A. As the center of gravity passes beyond the
hinge point.

Q. To the point of the hinge point as we view
it on exhibit 3, on the side view? A. Right.

Q. Then what happens?

A. That has a tendency to relieve—it doesn't
relieve the frame of any bending, but it has a ten-
dency of relieving jacks 33. [99]

Q. And that load is transferred more and more
to the outriggers? A. Right.

Q. When the derrick has now reached its verti-
cal erected position, the axis of direction has some
lean forward from the perpendicular, hasn't it?

A. Right.

Q. About how many degrees?

A. Three and a half, probably would be an av-
erage.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. That has been uniform and conventional for both Back-In types and Drive-In types?

A. Yes.

Q. That is the element or kind of derrick that is used. A. Right.

Q. When you have reached that position, where are you?

A. The next thing you do is set the jacks on the front derrick legs firmly on the foundation. [100]

* * * * *

Q. When did you first learn about it?

A. Twenty-three years ago.

Q. It is what anybody would normally use to handle a structure of that kind? A. Yes.

Q. Then what happens, you hold it in that three degree position by the double acting cylinder.

A. Then you adjust your matting, that you may need on the particular location,—

Q. Which we have marked 41.

A. That is the base plate which would set on any matting.

Q. Let me see, maybe we have that shown in this same drawing that we had here. Very well, it is some sort of a flat support.

A. Sometimes it is a timber, sometimes it is blocks, individual blocks. It will vary according to the conditions.

Q. All right.

A. But that usually is approximately placed be-

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

fore they even start to raise it. Then it is adjusted—

Q. As is 39 adjusted with a screw?

A. There is a screw.

Q. What is the maximum travel that you provide in the structure?

A. We try to hold them to around nine inches maximum.

Q. That is the maximum that you build? [101]

A. No.

Q. How far could that be extended?

A. That could be extended—oh, twelve, thirteen inches.

Q. O.K. That enters inside a hollow member 19?

A. Right.

Q. There is no physical limit however, that could be several feet long, if they wanted to.

A. That's right.

Q. We have got this thing extended and erected. What do you do with this structure?

A. Well, then you—

Q. Are you completely erected yet, Mr. Woody?

A. Well, you have some kind of guy lines—

Q. Tell us about the guy lines.

A. Ordinarily a unit of this kind, will have normally—

Q. You are now looking at exhibit 18?

A. 18. Ordinarily there are permanently attached to the rear end of the vehicle, two guy lines,

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
that go to the crown of the unit. They are shown
as the diagonal line.

Q. Will you mark these on exhibit 18, which you
say are also employed in erecting the structure on
exhibit 3, is that correct?

A. They come into play after it is erected and
extended.

Q. Oh, well now, we haven't yet extended the
derrick. Maybe we are getting ahead of ourselves.
Let's extend the—— [102]

A. The operator after he gets this set up there
on base, after the crew members have set the der-
rict jack screws, then he proceeds with extending
the derrick, which in the case of these derricks, is
done by another hydraulic ram,—a long hydraulic
ram.

Q. You don't use the device you use in the
Back-In units shown in the Moon patent referred
to—— A. We changed that.

Q. Excuse me, you are interrupting me,—as
shown in 2 671 537. You say you changed that?

A. That was changed before we abandoned the
screw raising device, or I mean before we made
this type unit.

Q. The Drive-In unit? A. That's right.

Q. All right. So there is some means for extend-
ing the derrick.

A. There is a long stroke hydraulic ram.

Q. The same way as a hydraulic ram used on a
hydraulic elevator?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. That is about the same, yes.

Q. So that then is erected to the position similar to that shown in exhibit 18, is that correct?

A. Right.

Q. Then you put the guys. You are now going to mark the guys. What is the function of those guys? [103]

A. The guys, since the structure is inclined, when the derrick carries loads on the travelling block, there is an unbalance in force, that tends to move the crown to the right and in order to minimize the bending that would exist in the structure, supports are placed at the crown, which in this case are these guy lines.

Q. The guys are in tension sufficient to take out the bending, caused by the overbalance of the crown? A. Right.

Q. By the way, looking at exhibit 18, does this show the position of the rams 34 and the other structures, similar to those which would appear in the former exhibit 3, when it is erected?

A. Very similar. The jacks are similarly placed. It isn't the same type of outrigger but it performs the same function.

Q. But from the point of view of rams—

A. Right.

Q. —and the derrick and the guys, it is a good representation of the appearance of the structure?

A. Right.

Q. As when the derrick was erected and using

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
the structure on exhibit 3? A. Right.

Mr. Subkow: How about giving us a little [104] breather?

(After a short recess, the deposition was continued as follows:)

Q. Now, Mr. Woody, we have described the erection of the structure and the forces which occur, and you have described the bending moments and the direction of forces. Would you say as a result of this construction that you have described, the chassis and vehicle creates a stable platform for the erection of the derrick?

A. Not without the supporting jacks, it wouldn't.

Q. I am including the supporting jacks.

A. Yes, that's right. Well, 33 and the outriggers, in combination with the outriggers they do.

Q. Will you tell us what happens now when you put up the structure into operation?

A. Well, the principal loading on the structure is introduced in the crown, from your travelling block and the system of lines, that operate over the traveling block and back to the hoist, and there is a vertical load at the crown from the travelling block, which produces an unbalanced force with respect to the angle of both legs. Generally there is an unbalanced force that is partially resisted by the line to the hoist and sometimes by a dead line on the back end of the structure.

Q. You have been pointing to page 1921 of exhibit 1 and the photograph at the lower left hand

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

of the page. [105] Now, that is not the structure shown in exhibit 3, is that correct?

A. It is a similar structure, but it is not mounted on the same vehicle.

Q. But as far as the telescopic derrick and its supports and its operation, it is identical—

A. That's right.

Q. With the—may I finish Mr. Woody?—identical with the structure described in coonnection with your exhibit 3, is that correct? A. Right.

Q. Will you proceed, Mr. Woody, and will you put marks on the photographs to indicate the features which you are discussing.

A. There is the travelling block.

Q. You are marking it as what?

A. A, is the travelling block.

Q. Excuse me, let's use the reporter's exhibit 1. You have been marking my personal exhibit. I hand you the reporter's exhibit, turn to page 1921 of exhibit 1.

A. Now, the travelling block is A, and it will be noted that there are multiple lines extending vertically to the crown, which we will indicate the crown area by B; and then there is a load line or live line between the crown and the hoist drum which we will label C, and additionally there is usually a dead line which is tied back down to the frame of [106] the vehicle and on which a weight indicator is fastened, so that the operator can estimate the load being lifted at all times.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. That dead line does not appear on photograph on page 1921 of exhibit 1?

A. It is not discernible in this photograph, but it is normally near the base of the derrick on the rear side.

Q. Could you put an X on exhibit 3, where that dead line would be connected?

A. Well, ordinarily it is connected in this area, on the opposite side, connects with the center ahead of the ram and to the main frame.

Q. You have marked exhibit 3 with that, Mr. Woody? A. Right.

Q. Go ahead, sir.

A. Now then the forces—

Q. Excuse me, Mr. Woody, for interrupting, you have not mentioned the guys.

A. Oh, they would come in a little later.

Q. I am sorry.

A. Now then, the forces that are introduced in the structure, the hoist exerts a force through line C, which goes over the crown, the multiple forward lines exert the greater force at the travelling block on any load that is to be pulled. The result of the load at the travelling block since it is [107] not or does not fall along the axis of the legs, the legs of the tilted structure has a tendency to produce an unbalanced condition, which would have to be resisted by bending—entirely by bending in the structure, if there were no other forces present, but since line C is included at a reverse angle to the

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

axis of the load and the legs, it in some degree reduces the effect of that bending, and the positioning of the dead line at the rear, further reduces the effect of bending. Additionally the two guy lines D, which have previously been placed in tension tend to resist the remaining portion of the unbalanced forces, and as a result, the resultant of all forces is at some point, or will pass through it, pass at some point near the front legs, the front leg jacks.

Q. Mr. Woody, are there also in addition to the forces that you have mentioned, any forces due to the weight of the derrick itself?

A. There is a force that arises from the weight of the structure, but in normal calculations, those forces are so small, that they are neglected.

Q. Now, are there any forces applied as a result of the pipes which I see indicated at the left-hand side of the photograph. They are pipes, aren't they?

A. That's right, they are pipes.

Q. Do they create a force in any way on the derrick?

A. They do. The direction and magnitude of force depends [108] on wind velocities and the set back of the pipe. [109]

* * * * *

Q. All right, let's take the condition which is shown in the photograph at page 1921 of exhibit 1, and a wind velocity in the direction to the right of the exhibit as we view the photograph on page 1921. In other words, towards the back end of the

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
derrick, and assume that you are loaded with a string of pipe such as one would normally encounter in operation, and state what the conditions of the various front and rear legs are with respect to the load.

A. In fact, we recommend that in any instances where they are working under conditions of high wind, that additional [110] guy lines be installed which will support the structure from all directions, but the structure as set up there with—as I understand the question, would the wind coming into the front of the structure—the tendency would be to relieve the front legs of at least a part of the load.

Q. And part of the load would be taken by the rear legs? A. That's right.

Q. It would then pass through members 23-D and 23-E and down to the frame and through the jacks 33 and the outriggers to the ground?

A. That's right.

Q. Have you completed your answer now, Mr. Woody?

A. I believe so. At the moment we have introduced guy lines, loads, the effect of the dead line and the travelling block and noted that they put external guys up, or are instructed to, in case of heavy winds.

Q. Now, taking a condition where you have ordinary moderate winds, or no wind particularly, and considering the situation such as it may appear on

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

page 1921, what is the relative nature of the load on the front and rear legs of the derrick?

A. The nature of that load is indeterminate. You have an elastic system. There is elasticity in the structure itself. You have elastic guy lines and under seemingly identical load conditions, the precise loading on the structure will vary from one set up location to the other. [111]

Q. It might be loaded in compression on the rear legs in the derrick in some cases, or it might be loaded in tension on the rear legs, is that correct?

A. Generally it will be in tension. There will be a degree of tension. That will vary.

Q. Would there be any condition under which it would be under compression? I am talking about the rear legs.

A. That's right, in cases where you have two lines to the rear a specified distance and only four lines to the block, and with wind forces not at the front, you might conceivably get compression. Now then in the single line loading from the same views you get compression in the rear legs. It is not a significant amount, but you definitely do get the rear legs in compression.

Q. Whether the rear legs are in compression, depends upon the rigging up that you do and the number of lines— A. Right.

Q. —the character of the wind—

A. Right.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. —character of wind velocity and the tension and the dead line and in the sand line?

A. Right.

Q. The front legs are always in compression, isn't that right?

A. Yes. In any working condition they must be.

Q. Now, there is one piece of information I haven't yet [112] obtained, that is the width of the cab. Let's draw that dimension in.

A. Let's scale it off of this other drawing. It would say it is $41\frac{1}{4}$ —41 inches. Let's see what this is. That measures about 36.

Q. As constructed you say it measures 41 inches, and scaled off on exhibit 3 it measures 36.

A. Yes, it was made wider at one time I believe, between the time this drawing was made and actual construction, but I don't recall.

Q. Will you write in between the arrows the word cab width. A. Right.

Q. On exhibit number 3. The truss formed of members 23-D, 23-E and the outriggers straddle the cab, one on one side and one on the other side, is that correct? A. 23-E is right.

Q. That includes also 23-D, does it not and the outriggers? A. When it is folded—

Q. Exhibit 24?

A. Right, in the folded position in View A, the entire outrigger assembly going down the highway is on the outside of the cab. [113]

* * * * *

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. We turn now to exhibit 4. The exhibit 4 represents another type of Drive-In unit?

A. Right.

Q. And can you identify it by its trade designation?

A. This is the one appearing on page 1884 of plaintiff's exhibit 1.

Q. In what way does the structure shown on exhibit 4, differ from the structure shown in exhibit 3?

A. Principally in the chassis, which is a single piece chassis. In other words, it is a single vehicle rather than a combination and the four axles are fixed to the chassis, the two at the front being steerable.

Q. Let's identify the chassis and the steerable wheels. A. The chassis is 1 again.

Q. May we use 201?

A. O.K. number 201 and the front steerable wheels will be 202 and the rear will be 202-A. [114]

Q. 202-A are the rear wheels of that?

A. The rear steerable wheels.

Q. Are 202-A steerable?

A. Right, these are differentially steerable. The suspensions is very similar to a rear bogie, which rigidly spaces the axles and hold the axles parallel at all times, so that it is only the wheels that turn.

Q. There is no central pivot, or fifth wheel construction through the front bogie as in the former exhibit 3? A. No.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. So the bogie members are fixed rigidly to the chassis 1, and the axles are fixed rigidly to the bogie?

A. The bogie suspension, right.

Q. And only the wheels are steerable on their rigid axles?

A. Right. That is the same bogie—or the front bogie set up that appears on a conventional truck on page 1889 of exhibit 1, that is the same steerable front axle bogie as is used on this vehicle in exhibit 4.

Q. Now, the construction, except for the differences you have just indicated, the construction and operation of this vehicle shown in exhibit 4 is identical with that shown, and which you have described in connection with exhibit 3, is that correct?

A. The vehicle isn't identical. The arrangement of the drive and components is similar. There is a great deal of [115] difference in the vehicle itself, because this is essentially a conventional truck unit, such as appears on page 1889, with the engine left out and placed in the rear and the reverse drive installed.

Q. Mr. Woody, as I understand exhibit 4, exhibit 4 represents a structure illustrated as you indicated on page 1884 of exhibit 1 and that the hinge axis 226 and its corresponding hinges is supported on the chassis 1, in the same manner as the hinge is supported on the chassis in exhibit 3, is that correct?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. It is similarly—the principal support is the same. The details vary, but essentially it accomplishes the same thing.

Q. Is the framing of that support in the plane perpendicular to the drawing in exhibit 4, such as illustrated at the front view of exhibit 3, of the same construction as appears in exhibit 3?

A. It isn't the same construction. It is supposed to provide the same function. If I remember correctly the truss is not true and there is an area between the diagonal members there that must resist any truss loads in bending through there.

Q. If there is any substantial difference, I think we ought to have that difference in the record. I don't want to leave the record uncertain in that respect. I show you [116] drawing 27-482, which we will mark as exhibit 25 which you have just presented. At the extreme left of the drawing appears the framing for the support of the hinge 226, which we will mark 226 here. A. That's right.

Q. Does that drawing show the differences to which you have just referred in the framing and support of the hinge?

A. Yes, it does, and contrary to my recollection, it appears that the hinge is complete, that is, if the center line of the diagonal brace, that corresponds to member 23-C in exhibit 3, is projected, it will intersect the center line of the front member of the chassis, approximately on its center.

Q. Will you mark that member 223-C.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. 223-C. Right.

Q. Now, except for that difference and the difference which you indicated in the construction of the chassis, are the structures shown on exhibit 4 and exhibit 3 substantially the same in structure and function?

A. They are. The materials are different, which is no functional difference.

Q. One is steel——

A. The size of the members and the forms of the members.

Q. I notice that the center line of the hinge 226, with respect to the center line of the axle of wheel 202, is such that the axis of the hinge 226 is forward, toward the front [117] of the vehicle, from the vertical axis of the axle of wheel 202, is that correct?

A. That is to the best of my knowledge substantially correct. The vehicle you are looking at here has only been legal in one State, that is Oklahoma, since the front overhang is in the neighborhood of seven feet, and that is the reason for the movement of the hinge ahead of the front axle.

Q. Where is the front of the chassis, Mr. Woody, in this drawing? A. Right there.

Q. Will you mark it with some number?

A. 203 would be all right. 203, that is the front of the chassis.

Q. Can you tell us the distance between the

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

vertical line passing through 226-A and vertical line 202-A is?

A. 226 is again approximately eight feet from the ground line. It usually is within two inches either way.

Q. I am talking about the distance between line 226-A and 202-A.

A. I beg your pardon.

Q. Which I have just marked with such numbers.

A. According to the drawing it is approximately two inches.

Q. I show you a photograph on page 1884 of plaintiff's exhibit 1, in which the hinge 226 is also forward of the front axle of the wheel, corresponding to 202 here on exhibit 4. [118] Can you tell us what the distance is that separates the hinge from the center line of the axle on that wheel.

A. That distance should be the same as shown in the drawing just referred to.

Q. Is the structure shown on page 1884 an actual photograph?

A. It is from an actual photograph. It may have had some artist's work done on it, but it is from an actual photograph.

Q. In that structure on page 1884, is the hinge point ahead or behind the 203 of the chassis?

A. It is to the rear of that of necessity.

* * * * *

Q. (By Mr. Subkow) : Mr. Woody, we have been

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
handed a series of photographs through your coun-
sel, Mr. Crowley. Will you identify these photo-
graphs and what they show?

A. This first photograph is an over-the-road
view of the unit appearing on page 1883 on ex-
hibit 1.

Q. We will mark that exhibit the next in num-
ber, exhibit 26. Mr. Woody, that structure is a pho-
tograph of a structure manufactured and sold—

A. By Franks.

Q. —by Franks?

A. Yes, Franks Manufacturing Corporation.

Q. The corporation before the merger? [119]

A. Right. This photograph is one of the unit de-
scribed on page 1884 of exhibit 1, and was manu-
factured and delivered by Franks Division of Cabot
Shops, after the merger.

Q. Mark this as exhibit 27.

A. This photograph is a close-up view, three-
quarter front close up view of the same unit, ap-
pearing on photograph exhibit 27, showing the
outrigger legs and the derrick legs positioned on sup-
porting pedestal.

Q. We will mark this exhibit plaintiff's exhibit
28. Mr. Woody, in common with all of the derrick
structures to which you have testified heretofore, is
it true that they, as well as this, show an unbraced
section, between the front legs of the derrick, be-
tween the pedestal under the front legs there, a

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

cross member which I will mark as A on exhibit 28, is that correct?

A. That is correct. In other words, you mean that there is a window there so that the legs can straddle?

Q. Yes, and a person inside the cab can look straight through?

A. They could, although it is to straddle the frame of the structure generally. This same derrick structure may be used on several units, and the clearance is necessary to straddle the frame. It is a construction that we have used for years. [120]

Q. Will you mark the next one exhibit 29. I will ask the reporter to mark the next three exhibits in order, 30, 31 and 32. I hand you exhibit 30 and ask you to identify the structure shown in that photograph.

A. That is essentially—it is the same—well, it is the identical unit I think to the one shown on exhibit 26.

Q. Showing the derrick in the erect position but not extended?

A. Right, and it is from the opposite side.

Q. Photographed from the rear end.

A. Yes, it is a three-quarter rear view from the opposite side.

Q. Will you identify the structure shown in exhibit 31?

A. The structure shown in exhibit 31 is the same unit as in exhibit 27, and essentially the same

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
view as exhibit 28, except it is—wait a minute—it
is taken from the same side. This is, you might say,
a three-quarter rear view, where this exhibit 28 is
a three-quarter front view.

Q. Now, will you identify the structure shown
in exhibit 32?

A. 32, that is the same unit as described on page
1883 of exhibit 1. It is not identically the same unit
as 26 but it is similar.

Q. Showing the outriggers in position?

A. In position.

Q. And the derrick erected? [121]

A. Right.

Q. The structure which is in exhibit 32, to which
the men are paying attention, is connected to the
lines going to the crown, is that right?

A. Right. They have a rod elevator on there,
tied on to a rod, getting ready to hoist it.

Q. I call your attention now to a series of ex-
hibits, 5 and 21, which you have previously identi-
fied, I believe, as the unit which is illustrated and
described on page—we are now talking about ex-
hibit 21,—which is a unit which is shown on page
1810.

A. No, 21 is this unit here as shown on 1809 of
exhibit 2. Now, this is the Dart chassis.

Q. In completing the statement I meant when
I said page 1810, I was referring to exhibit 2. I
call your attention, Mr. Woody, to the fact that
there are two front wheels under the cab in exhibit

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
2, while on 1809 we have four front wheels.

A. There was one chassis built, the same as 1809, except that it has a single front axle and this represents that chassis.

Q. "This" being exhibit 21?

A. Right, represents that chassis.

Q. Does exhibit 5 correspond to the structure shown on page 1810 of exhibit 2?

A. No, it is a later version. It is intended to represent a chassis that hasn't been built, which would be the same as the chassis shown on page 1884 of exhibit 1, but with only [122] one front axle instead of two.

Q. This is merely a theoretical design and the weights and balances which appear on it are merely theoretical weights and balances? A. Right.

Q. But which have not been tested by experience or practice?

A. That's right, it has never been built.

Q. Did I understand your testimony previously to be that exhibit 17 is the photograph of a structure with two front wheels which correspond to the structure shown on page 1810, of exhibit 2? [123]

* * * * *

Q. All right. Now, Mr. Woody, what was the first Drive-In structure which you built?

A. Well, the first one that we actually constructed was built in 1952, or was completed in 1952.

Q. The first structure completed in 1952, did it represent a form of exhibit 3, or exhibit 4, or ex-

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
hibit 20? A. It was 3. [125]

Q. Exhibit 3, and I notice on exhibit 3, that it bears a date of 9-3-50. A. Right.

Q. Can you state whether that structure was completed prior to that date, or after that date? Can you give us that date, if you know?

A. The completion and manufacture?

Q. Yes, sir.

A. The completion and manufacture was in the middle of '52.

Mr. Crowley: I must make note, Mr. Subkow, that Mr. Woody just testified to that.

Mr. Subkow: I am sorry.

Mr. Crowley: And the delay has been considerable.

Q. When did you start the design of the structure that was completed in 1952?

A. Oh, the first work was probably done in '49 or maybe even before '49, and it was only initiated after exhausting the possibilities of other approaches, that is through trailer vehicles which were supposed to be an answer to the legal problem, but it developed that they are no solution of legality, and that the only conceivable way of producing the equipment that we were most hurt on and the industry was most hurt on, was to simplify and eliminate all duplications and that is what we had in mind in attacking the problem. It wasn't just a new design. It was a development that was initiated by the highway enforcement officials. [126]

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. The problem which led to the design of the Drive-In unit by the Franks Manufacturing Corporation, with which you had much to do, arose from the fact that the Back-In units were not legal on the road in many states, is that correct?

A. Yes.

Q. When did that problem first arise?

A. The night that the Japanese surrendered, the patrolmen seemed to come out of the bushes and byways along every highway in the country.

Q. That was about September of 1945?

A. Right.

Q. When that occurred, what did Franks Manufacturing do about trying to solve that problem?

A. The first step was to try to reduce the weight of existing equipment, and it became evident that that was definitely limited. The next step was to try to provide more axles by utilizing semi-trailers, in which you would have at least two axles on the semi-trailer itself and two on the rear of the towing tractor and still a third steering axle on the towing tractor, but that didn't work out, and from an overall study, it became necessary to eliminate some of the things that we had been using. Well, one of the first things—

Q. May I interrupt. Is there some catalog where we could identify that semi-trailer construction that you are referring to? [127]

A. I don't know. We may have put them in the catalogs. The fact of the matter, as far as the semi-

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
trailer unit, if you have a 38 catalog—it isn't a service unit but—I think this is actually a semi-trailer unit, yes, there is one right there.

Q. You are now pointing to the photograph on page 3 of Franks Manufacturing catalog?

A. Yes.

Q. Introduce that as plaintiff's exhibit 33. Go ahead.

A. The trailer units, whether full trailers or semi-trailers,—this design here was officially full trailer—the semi-trailer didn't solve the problem, because your gross weight, since you have to have a separate entity such as a towing tractor to move it, your gross weight actually goes up when you employ a semi-trailer, and on account of the restrictions on overall length, you are right back where you were, to conform with the highway laws again, to be strictly legal—

Q. That was no solution either?

A. That was no solution either.

Q. Then what did you do?

A. And the study of the problem revealed that the only way the large equipment could be made legal, was by simplification and elimination of components in the conventional truck line. Then we mounted our product on a frame and we set that [128] frame on top of another frame, which is the chassis frame of the vehicle and that construction doesn't lend itself to the most economical use, therefore, if we could use one single frame to support

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

both hoist and—or as both a hoist frame and a chassis frame, we could eliminate that component.

Q. By mounting the hoist directly on the chassis?

A. On the chassis frame. Then by simplifying the drive so that we could make one component maybe perform the function of two components—

Q. For example, if one could drive the hoist and also drive the vehicle?

A. Right, and by eliminating all components that were not strictly essential, it seemed possible by careful design to achieve strict legality.

Q. Did you make such a design?

A. We eventually did. We were at it by spells, over a period of several years.

Q. That is the design that we have now seen, exhibit 3? A. Right.

Q. When did you first decide to mount the cab at the front of the vehicle and the engine at the rear of the vehicle and to turn the derrick around, so that the front would be on the back of the vehicle and the bottom and the legs on the front of the vehicle?

A. That was done when we had exhausted other [129] possibilities and on the final analysis, we took the California highway law book, just opened it and set down the governing conditions, and when we came to the three foot front overhang, the only reasonable way of achieving that was that had to be—

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. The front end—

A. —of the derrick, of the cab, had to go on that end.

Q. When did you come to that decision? Can you fix the time when you came to that decision?

A. That was probably in '49,—'48,—late '48 or '49.

Q. By that time had you heard of the design of the Drive-In derrick that Jim Moon had made?

A. I think I had. The fact of the matter, Jim and I had discussed that several years before. [130]

* * * * *

Mr. Crowley: Let me state that I believe what Mr. Woody means, is exhibit 8 of the Moon deposition, which is presumably on its way here from Boston.

Q. Do you know when you received that?

A. No, and I don't know how long it had been in the organization when it was turned over to me.

Q. Who gave you that brochure?

A. I believe it was Carl White.

Q. Do you know when he handed that brochure to you?

A. No, I don't. I think that he had had it—I am under the impression that he had had it for some time when he did.

Q. Was it handed to you during the period you were trying to solve the problem to which you have referred, and during the period you were trying the various solutions with the Back-In unit?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. I don't believe so. As I recall it was afterwards. [133] He had, shall we say, grown tired of keeping it or doing whatever he might have done with it. He turned it over to me for filing purposes.

Q. Who is Mr. Carl White?

A. He was president of the old Franks Manufacturing Corporation.

Q. Is he the Carl White who is the patentee of patent number 2 204 713? A. Yes.

Q. And is the Franks Manufacturing Corporation, the assignee, the Franks Manufacturing Corporation, about which we have been testifying?

A. Yes.

Mr. Subkow: We offer this patent 2 204 713 as plaintiff's exhibit 37. [134]

* * * * *

Q. When you decided to build a portable derrick, of the Drive-In type, what was your first idea for a construction of that design, can you recall?

A. I think that I made some preliminary sketches, that had to do with details rather than generalities, and then along about that time, I was shunted off on another project, and at that time we had an engineer in California, that worked on a great many different schemes over a period of, oh, perhaps a year.

Q. What was the name of that company who worked on these various schemes for the Drive-In design, is that right?

A. Well, I believe that most of those were

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Drive-In models and generally I considered all the designs that they produced unsatisfactory and short of accomplishing the purpose that needed to be accomplished.

Q. What was the name of that engineer, Mr. Woody? A. Mr. Aular.

Q. Is he employed with Franks now?

A. No, not now. He is retired.

Q. Where does he live?

A. He lives in Tulsa. Oh, I don't know that those tracings,—they made their own drawings out there and I don't know that those are still in existence, because we didn't utilize any of them.

Q. Do you know his address in Tulsa?

A. I don't know it, but it should be in the phone book.

Q. Can you from memory reproduce the various designs that he proposed in the form of sketches?

A. Generally he had the engine cross-mounted with the chain drive from here to there and they were complicated. They didn't follow the pattern of design that we had established through the years which is an in-line drive from your engine to a right angle gear box, into the hoist, and that arrangement we have used it on both trucks mounted and skid units. It has been a trade-mark of Franks' design. It is generally for the engine in line with the longitudinal axis of the unit.

Q. How did he mount his derrick?

A. I don't recall. Most of them were not too

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

much in detail, but it was just shown up over the rig as I recall it.

Q. He did not develop any hinge mounting of any kind?

A. He probably showed—I don't remember anything—I don't recall a thing that was unusual about it. He probably showed the same or similar hinge mounting as had been used on the truck jobs.

Q. On the Back-In truck jobs? A. Yes.

Q. Where did he mount the cab?

A. I don't recall whether or not he had an enclosed cab on his designs.

Q. Where did the driver sit?

A. He sat towards the rear end. Now the older design had a narrow hinge point and he probably sat alongside the outside of that. [137] There wasn't room enough for a cab behind.

Q. In other words, what he did was to take the Back-In device and instead of backing it in, he drove it so that the back end of the Back-In device was now at the front end of it.

A. I think that was about the approach he used, as far as the derrick mounting is concerned.

Q. Let's take a Back-In unit here and in red pencil can you make the changes which conforms to Mr. Aular's suggested design?

A. Maybe there is a photograph that would be better. You can't see any depth there.

Q. Well, I think we can take exhibit 1 or 2.

A. Here is what I am talking about right here.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Here is the older design. See the hinges were in a closer space, that spacing was in use years ago, and there was considerable space between that point and the outside of the frame, and I believe that that at least in one instance, one of his proposals that he utilized that space.

Q. You are talking with respect to the photograph on page 11 of Franks Manufacturing Corporation's catalog 42? A. Right.

Q. Just let's us mark that so we can talk about that, as the exhibit next in number. Now, will you with a red pencil or in ink, describe again and mark the places to which you made previous reference?

A. There is the brace. Between the brace X and the outside of the bed Y, there is a little short—oh, three feet of space that might be utilized.

Q. Transversely of the vehicle?

A. Transversely of the vehicle that might be utilized as an operating job for driving the vehicle. That actual part of it never came into too much discussion because the hoist drive and the mechanical components were never satisfactorily arranged.

Q. What year was that now?

A. That was probably 1949 and the early part of '50.

Q. The latter part of '49 or early part of '50?

A. Probably, because that drawing was made in '50.

Q. That drawing is in exhibit 3?

A. Yes, and that was summarizing a conference

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

between ourselves and the truck manufacturers as to the arrangement of the vehicles.

Q. Could you locate—you can't locate the depth there, excuse me. Exhibit 3 does not correspond to the front of the structure shown on page 11, does it?

A. No, this one is later and we don't have one that does.

Q. How far back of the end of the chassis is position X and position Y on page 11?

A. Those extend normally, longitudinally there is five to six feet of space in there that was available for cargo or [139] any purpose that might be desirable to use this for.

Q. So that essentially what you are talking about, is that the Back-In unit would have run forward, by putting the drive wheels and tires at the back of the Back-In unit thus making it a Drive-In unit, is that correct?

A. Well, the wheels were reversed. What had been the back end had a steerable axle on it and I believe that those were generally three axle vehicles in the sketch. Now, I may be wrong on that.

Q. And you disagreed on that?

A. I did especially. I didn't give much consideration to the derrick installation of that part of it, the driving feature, because it was unsatisfactory before it got to drive the hoist, which is the prime function in building equipment of that kind.

Q. Did the ends of the legs in Mr. Aulur's design, extend beyond the end of the chassis, which

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
is now the front of the end of the chassis, the regular amount?

A. I believe that he had bumpers set out there, some means of controlling that front overhang. I believe he did.

Q. But the distance from the hinge point to the end of the rig, was it greater than you have on design exhibit 3? Was it still about eight feet?

A. It is very likely—that dimension has been near the same for years. [140]

Q. And it was so, about eight feet, in Mr. Aulur's design?

A. I would say it was, very likely.

Q. When did you first decide to modify that so that the distance from the hinge point to the end of the derrick in the roadable position, was different from that eight feet and more like the form that is in the exhibit 3?

A. The narrow hinge spacing was originally established in 1937, and the structure that was built at that time was a forty-five foot single piece structure, but through the method of standardization, the size of the structure had grown and grown, and as I recall there was a $31\frac{1}{2}$ inch spacing between the hinges which was done for a purpose at the time.

Q. May I interrupt just a moment to ask you whether you are talking now about the hinge point shown at 55 in the Woody patent 2 204 716?

A. That's right, inset as shown on that patent.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. And that represents the type of structure and hinge to which you have referred in connection with your exhibit 39 at page 11? A. Right.

Q. You are the Mr. Woody, who is patentee of the patent 2 204 716? A. The same.

Mr. Subkow: I will offer that as the exhibit next in number, 40. [141]

Q. Go ahead.

A. Well, we had always on the drilling derricks, had wide spaced hinge points, out near the eight foot limit approximately, directly beneath the legs, but on account of as I recall, working under a standard derrick there was one of these, and another one was where a customer wanted to use reaving sheaves and the initial design, the close spaced hinge points were used, and it finally became evident, that a $31\frac{1}{2}$ inch spread, didn't give very much stability to a 96 foot structure, and we changed over one or two units in the field, and were tending toward spreading those hinges anyway, so that when it came an opportunity to re-design, the derrick structure was made completely different. The hinges were spread out to give it stability.

Q. Was that one of the changes and advances which were occasioned by putting the cab in the front? Was that the beginning consideration, to spread out the hinge points, thus straddling the cab and thus giving you a more stable structure than you had obtained in the Back-In units?

A. That was right. Since we were departing

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
from standard in one respect, we just departed all
the way.

Q. In other words, to make a major change that
would improve the structure stability.

A. Right.

Q. In the stability character of the structure.

A. Right. [142]

Q. What was the other consideration you next
had in making this change?

A. You mean the change to the Drive-In?

Q. To the Drive-In from the Back-In structure.

A. Of course, as I said previously the prime
motive was the legal code book that said three feet
overhang is all you can have legally, and customers
were insistent on legal equipment. They wanted it
legal from the manufacturer at least. If it was to
be made illegal they wanted the privilege of doing
that themselves. So that determined which end was
changed.

Q. Why in the Back-In unit, couldn't you have
made the overhang in the front end of the vehicle
legal, completely overhang by three feet overhang?

A. It could have been done if we had been will-
ing to change our basic structure, but we have
stayed largely to the concept of a structure that
goes all the way to the ground, and we like to see
those front legs go to the ground in one piece, and
to depart from that would mean a change in our
basic concept, and we were unwilling to do that.

Q. In other words, in a Back-In unit, if you had

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

moved the derrick rearwardly, so that the overhang would not be more than three feet, it would stick out in the back of the unit— A. Right. [143]

Q. —too far, and when you elevated it, it would be too long— A. Yes.

Q. —and you would have to sectionalize it.

A. We didn't want to sectionalize it.

Q. If you didn't sectionalize it, it would also overhang beyond the legal limit in the larger size, wouldn't it?

A. It likely would, if you maintained a legal single unit.

Q. So that both from the legal and the practical point of view, it was impossible to make the Back-In unit legally functional on the design?

A. It wasn't exactly impossible, but we considered it impractical and we were unwilling to do the things that would have been necessary.

Q. All right. So that the next consideration that you considered was, by mounting the cab in front and having a Drive-In unit, you could make a legal unit on the road, as far as overhang front and rear was concerned, is that correct? A. Right.

Q. What else did it give you?

A. Well, we got out of it, not that it couldn't have been gotten from a conventional type unit, but we did get out of it a single frame instead of a double frame.

Q. Didn't it also permit you, because you had a free extent of chassis to permit you to move the

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
hoist and motor power [144] in such a way to get
legal distribution of weights?

A. Well, we have a great deal of freedom on the conventional Back-In truck mounted unit. The only thing is that we don't have enough carrying capacity.

Q. On the Back-In unit?

A. On the Back-In unit, we don't have enough legal carrying capacity. We get all the axles loaded and we still got some left over.

Q. But that is not so in the case of the Drive-In unit?

A. By careful design and control, you can make the big units legal.

Q. So that the Drive-In unit can be made legal, both from the point of view of overhang and from the point of view of weight and balance distribution on the axles? A. Right.

Q. And also on erection you get a stable structure? A. Unh huh.

Q. Your answer is yes, Mr. Woody?

A. Yes. It is not necessarily more stable, but it can give you a stable structure, that's right. [145]
* * * * *

Q. (By Mr. Subkow): Mr. Woody, what effect did the design of the Drive-In unit have upon the ease of positioning the unit, as compared to the Back-In unit?

A. It improved the ability to spot the unit ini-

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

tially at the well and increased the difficulty, in many cases, of getting away from the well.

Q. Will you explain what you mean by improving the ease of spotting the unit?

A. Since the operator in a position—I mean the driver was in a position to see the point to which he was driving, he could drive the vehicle up to the well, without relying upon signals from another man, although he still has another man there to gauge the distance from the polish rod. [146]

* * * * *

Q. Do you agree with this statement which appears on page 3 of Franks Manufacturing Clipper, which I will ask the reporter to mark as the exhibit next in number. First, can you tell me what this is, exhibit 41.

A. It is a brochure prepared by our advertising and sales department, to promote the sale of the Clipper unit.

Q. That is the Franks Drive-In unit?

A. Right.

Q. I read to you, as you will read with you, the [149] following statement which appears on the bottom of page 3 of exhibit 41, the second sentence which reads: "Clear vision at all times combined with freedom of movement makes for greater safety as well as operating speed and efficiency". Do you agree with that statement?

A. Yes. That statement though is not referring to the drive-in feature.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. What is it referring to?

A. That is referring to the fact that the derrick is tilted, to give working room ahead of the structure and the unit is controlled from a movable station, that can be placed in any position of best visibility within certain limits, around the well.

Q. The clear vision to which reference is made, is not meant to be the clear vision of the driver inside the cab?

A. No, it is the operator of the trailer, whatever you want to call him.

Q. It is a fact, however, is it not, that because of the construction of the truss member 23, 23-C, 25, and 23-A, that a porthole is created to give the driver clear vision as he drives?

A. As he drives to location, yes.

Q. That appears as shown on the photograph on page 2 of the exhibit 41? A. Right. [150]

* * * * *

Q. Then the statement which appears on page 2, of exhibit 41, which states that "Outriggers with 18-ft. spread, supported by hydraulic jack legs, stabilize raising and extending, eliminating all guying except to front of vehicle," is in your opinion a misrepresentation of fact?

A. It is an overstatement. It is an overstatement. In theory from the weights involved and the points of support, the structure will stand with the floor full of pipe at I believe—I can't quote the precise figure, but I believe it [152] is around a

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
seventy miles an hour actual wind velocity. It will
still have a margin of support left.

Q. Which advantage is not true in the Back-In
type?

A. No, it wouldn't have the widespread base that
means stability, which was the thing behind install-
ing the outriggers.

Q. When you said "no", were you agreeing with
my statement—

A. That the Back-In unit did not have the sta-
bility that this one does? I will agree with you.

Q. You say you agree with me?

A. I agree with you that it did not have the
stability. [153]

* * * * *

Q. Now, for a like unit, I mean equal, like
Back-In unit, for the same horsepower and derrick
size and other comparable features, would the
weight distribution on the back and front wheels
meet the legal requirements which the equivalent
Drive-In structure would meet?

A. Not by stabilizing a standard chassis they
wouldn't, because you would have that duplicate
frame work in the standard chassis, weight com-
ponents that you don't need that are of [154] value
to the highway operation.

Q. Referring to the structure exhibit 3, and the
truss frame work which supports the hinge and
creates the porthole for the driver, does that create

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
any safety features which are of any importance
in this structure?

A. Well, not actually, that I can think of. If I understand what you may refer to, you mean as respect to—

Q. Well, was this truss work designed for any purpose other than loading support?

A. No, that was—it was designed to give an adequate truss work outlook here to support and stabilize that derrick part over the road and in the upright position.

Q. In case of a turning over of the cab—

A. It is adequate to more than support the weight that normally is below and that would be on top of it.

Q. —and it does protect the driver?

A. That's right. Those hinges will probably,—well, they will carry with a fair margin, 60,000 pounds, which means that at failure it would be around 120,000 pounds and the most that you would have on them if you upset it completely is about—oh, you might have 20,000 pounds.

Q. So that that structure is a safety feature, with respect to the driver, in case of an accident, such as a turn over?

A. It is. That was a byproduct, not purpose.

Q. But you got that advantage? [155]

A. Yes.

Q. Now, Mr. Aulur's design, that would be the modification you described in connection with page

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

11, of exhibit 39, in case of a turn over, would the driver in that design, have had the protection which you gave him in the design of exhibit 3?

A. He wouldn't have had as much.

Q. He might have been in serious danger, might he not?

A. Under certain circumstances he could have been, yes.

Q. What other safety provision did you build into this structure?

A. Well, the outriggers were a safety measure; all the jacks are a safety measure; in considering the frame design for instance, it was designed with the new jack support so that it is adequate to support the load without even the stabilizing jacks under the ram.

Q. Was there also a safety feature in the fact that you were designing a structure, so that the deflection which would occur, by reason of the raising loads, would not cause any overturning moment, that would tend to tip the structure and make it fall over on its side?

A. That's right. The outriggers that add on to this truss that goes through there, gives you a broad base, then this 23-E gives a truss back to the point at which the frame is developing its maximum section, so that you have got all of [156] that tied together in an integral unit.

Q. So that the structure which is defined between points 36 and the jacks 33 and the hinge

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
point 26 prime, including the outriggers, makes a stable platform, so that deflection is taken out, so overturning moment of the structure cannot occur, is that correct? A. Yes.

Q. Is that true in the Back-In unit using the sort of mechanism of the Woody patent, to which we have referred?

A. It wasn't as true with it, for the simple reason that it didn't have as broad a base, and it didn't have as rigid a frame. That is another thing. [157]

* * * * *

Q. Would it be possible to employ in the Drive-In mechanism, the screw raising mechanism of the Woody patent, which you used in the Back-In unit?

A. Not without modification. It could have been used.

Q. But if used, it would stick too far forward from the front of the—

A. That is correct, I would say, yes. [158]

* * * * *

Q. As a matter of fact, Mr. Woody, isn't it true that before you used a screw raising mechanism for a Back-In type, that you did use hydraulic jacks?

A. That's right.

Q. I show you a catalog, another Franks Units, on which in the upper—which I am going to ask the reporter to mark as the exhibit next in number (42).

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. The preliminary design was done in 1936 and construction was finished in March, I believe, of '37, that one unit right there.

Q. You are pointing at the front page, in the lower photograph, that shows a Back-In type, with extended hydraulic jacks for lifting the derrick?

A. Right. [159]

Q. There is also a further showing of such a structure on page 3.

A. In the over-the-road position.

Q. What kind of jacks were those?

A. Those were hydraulic multistage jacks.

Q. Referring back to exhibit 33, at page 10, it also shows the same structure as shown on page 3, of exhibit 42, is that correct? A. Yes, right.

Q. Now that was also a double acting—

A. Right.

Q. —similar in character to the jacks that you are using on the Drive-In unit now?

A. Right.

Q. You however discontinued using these hydraulic jacks? A. Right.

Q. And you went to the power screwed type?

A. Here is one of the early units with the power screw.

Q. That is on the front page of exhibit 33.

A. I believe that we built the first power screw units in 1937.

Q. You then abandoned the use of the hydraulic jacks?

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. Except on the units that were already designed and for a time we built both.

Q. Then you discontinued using the hydraulic lifting [160] mechanism? A. Right.

Q. And went to the power screw type, which is shown in the Woody patent, to which we have referred? A. Yes. [161]

* * * * *

Q. Isn't it also true, that the structures shown in exhibit 42, are much lighter, and that the derricks are much lighter construction, than in the big telescopic derrick of the Drive-In type?

A. They were lighter derricks, during that development period each screw structure was apt to be just a little bit bigger than the one before.

Q. And the danger of which Mr. White was aware, would become more pronounced—

A. That's right.

Q. —in the telescopic derrick?

A. That's right.

Q. And that was another reason why you abandoned the hydraulic lifting mechanism and went to the screw mechanism? A. That's right. [162]

* * * * *

Q. (By Mr. Subkow): Mr. Woody, I call your attention to plaintiff's exhibit 19, the Dart Truck Company photograph. A. Right.

Q. You were making some investigation to find if you had any correspondence available relating to this design.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

A. I checked, and the story that I got, was that it was most all verbal; that at the API meeting in 1952, representatives of Dart Truck Company, contacted some of our people who were in Chicago, and as a result of that, Dart came up with this idea here, or with that conception. It would seem that just judging from some of the details that I see there, they probably had a photograph of some kind to look at. Now, I am quite sure that they didn't know enough about the equipment to produce even as logical a drawing as they did without something as a suggestion. I see a little bit of the form of the larger unit in that hoist, so they probably had some picture of it, or—

Q. Was that of the Back-In type you are talking about?

A. No, that was Drive-In—well, no it could be either one, because what I was going by is this, what should be a [165] cathead.

Q. The markings that you are pointing to there—

A. This should be a cathead here. It actually doesn't represent too much of anything.

Q. Could the record show that the witness has marked the item to which he has been referring with the letter A and a lead line.

A. That form could be—well, that is the general form of all of our winches. This could be a simple jack shaft.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Will you identify the item to which you were making reference symbol?

A. Well, the flange could represent the end of the jack shaft, and B & C were doubtless intended to represent a shaft and to indicate a drum position.

Q. Mr. Woody, did you have any discussions with the Dart Truck Company with respect to this photograph, plaintiff's exhibit 19?

A. Well, they were in the plant here, as I recall, probably in January of 1953. By that time I had seen a copy of this wash drawing, and as I recall, was not too favorably impressed.

Q. Then you did have discussions with the representatives of the Dart Company? A. Right.

Q. And did they describe to you what this construction was supposed to be? [166]

A. That's right.

Q. All right. Then can you tell us if the derrick which I will mark with D,—is this correct, is that the derrick?

A. That is supposed to be. That is their conception.

Q. How it was mounted upon the truck? How it was supposed to be mounted?

A. This was not built. It was never built.

Q. How it was supposed to be mounted on the truck then?

A. They had the derrick mounted with the base toward the front end, in other words, it was a Drive-In vehicle.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Yes.

A. And they had the hinge axis, so it would appear, some distance back of the cab.

Q. You are marking the hinge axis with D. Would you mark it D-1. I think we have D.

A. Yes, D-1, or D prime.

Q. The hinge also appears at another place?

A. This is the same.

Q. Mark it. A. D-1 again.

Q. How was the derrick supposed to be lifted?

A. They show some hydraulic cylinders sitting on some rigid brackets.

Q. Would you mark the hydraulic cylinders.

A. They would have had to either bend or tear the structure [167] in two to raise it. The hydraulic cylinder is E.

Q. I point to another item here, which I will mark F. Will you tell me what that is supposed to be, according to the representatives of the Dart Company? I have marked it with the symbol F.

A. The representation of item F isn't too clear, because it isn't practical, but I would assume that they intended to show some form of support. The hinge and member F would be one of the principal supports for that.

Q. So that as I understand their design, it was intended by some means to have the cylinder E rotate the derrick about the hinge D prime—

A. That is correct.

Q. —to an erect position. The horizontal dis-

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

tance between the two front legs D-2,— I have marked the other front leg as D-2, is that correct, Mr. Woody? A. That's right.

Q. The horizontal distance between the front legs D-2, were they supposed to be greater or less than the horizontal distance between the two sides on the end of the chassis E-1?

A. Well, personally I think that the artist was not familiar enough with what he was trying to do, to take recognition of that. The distance between the two points E-1 would of necessity be near eight feet. The derrick structure is shown as being no more, and possibly less, so that in [168] actual practice, in erecting the derrick, it would be necessary to cut slices through the front tires and bumper and sheet metal work there.

Q. Isn't it true, Mr. Woody, that these artists' representations which are made as introductory to the offer of the structure for sale, are not intended to be teachings of how it is constructed?

A. That's right.

Mr. Crowley: Object to the question. I would like to have Mr. Subkow relate the question to the exhibit now being examined. Mr. Woody is not qualified as an expert in analyzing artists' representations. He is a qualified engineer.

Q. We have Mr. Woody's answer.

A. Right.

Q. With respect to this Dart structure, you said you did have some correspondence at one time, but

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
you haven't been able to find it, is that right?

A. I am afraid that most of that communication was by telephone and personal contact.

Q. Do you know whether there ever was anything in writing, in the form of correspondence, or reports, to the Franks Manufacturing Corporation, with respect to this Dart Truck Company suggestion?

A. There may have been with Carl White, although he was [169] inclined to use the telephone quite a bit.

Q. Have you any personal recollection of ever seeing any correspondence or written reports of any kind, relating to this structure on exhibit 19?

A. No, it was presented to me and I had my verbal comments on two or three occasions. Now, as an explanation, probably the only reason that we ever had Dart build a chassis for us was because we had the '53 Oil Show coming up, they wanted to have some equipment in the Oil Show and Kenworth took on a—well, it was a contract that atomic gun towers and production was tied up and we were unable to get delivery of a Kenworth chassis, and when that became evident, then all at once with this desire of Dart to produce equipment a matter of record, it became of extreme importance that we get something for the Show, so I was delegated to go to the Dart Truck Company and work out in conjunction with their engineer something that we could use and could show, and they furnished the first chassis, they

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
built it at their own responsibility and furnished it
through the Oil show at no expense to Franks, until
such time as the entire equipment was sold.

Q. And that was the structure which is shown on
the photograph—

A. If we get exhibit 2 I can identify it there.
There is the one shown on page 1809 of exhibit 2.

* * * * *

Mr. Subkow: Sure. May it be stipulated, Mr. Crowley, that the photograph which I will ask the reporter to mark as the exhibit next in number (marked 43) is a side view of Franks Manufacturing Corporation's Back-In unit. Will you stipulate, Mr. Crowley, that this is a side view of a Back-In unit as erected?

Mr. Crowley: I will stipulate and go further, it is a Franks' Back-In unit as erected, but it is not the [172] same as the prior exhibit.

Mr. Subkow: All right. Catalog 40, which I will ask the reporter to mark as the exhibit next in number (45). Will you stipulate that it is a catalog issued by Franks Manufacturing Corporation, prior to the merger?

Mr. Crowley: Yes, certainly.

Mr. Subkow: Will you stipulate that plaintiff's exhibit 46, catalog 53, is a catalog issued by Franks Manufacturing Corporation prior to the merger?

Mr. Crowley: Yes.

Mr. Subkow: Will you stipulate that exhibit 47

Plaintiffs' Exhibit No. 98—(Continued)

(Deposition of Wayland B. Woody.)

is a patent issued to Mr. C. J. Moon, who is the James Moon, one of the plaintiffs in this action?

Mr. Crowley: Yes, and assigned to Franks Manufacturing Corporation.

Mr. Subkow: And assigned to Franks Manufacturing Corporation, number 2 240 852, is that correct?

Mr. Crowley: It would seem so, yes.

Mr. Subkow: It is stipulated that the tear sheet, which I will ask the reporter to mark as plaintiff's exhibit 48, is a tear sheet from the Oil and Gas Journal, published since the acquisition of Franks Manufacturing Corporation by the defendant, and I will state for the record that the pencil notation May 6, 1957, Oil and Gas Journal, was placed upon this document by myself, from information supplied me by Mr. [173] Moon. The exhibit is offered without the pencil notations, but may it go in as so stipulated, Mr. Crowley?

Mr. Crowley: O.K.

Q. Mr. Woody, we have introduced into the record certain exhibits, one of which is catalog 53, exhibit 46. Turn to page 21. Can you identify the structure New Franks Clipper appearing on that page 21, was such a structure ever built by defendant, or its predecessor, Franks Manufacturing Corporation?

A. That is essentially the structure that was built on the Kenworth chassis as appears on the cover of exhibit 2, and on page 1807, the differences

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
between the two being due to art work that had been
performed on both.

Q. The structure as shown on page 21—

A. The derrick supports are—

Q. Please mark them, Mr. Woody, so that we
will have it of record.

A. The derrick supports as shown here are artist's faking. In other words, this photograph here was made from a composite of chassis photographs, derrick photographs and artist's imagination.

Q. In other words, the structure as shown, did
not exist when the artist made the drawing?

A. That's right. [174]

* * * * *

Q. Now, I show you a print of a letter, dated September 20, 1946, and a sketch, which I am going to ask the reporter to mark as exhibit 49 for the letter, and 49-A for the sketch. Can you identify these documents? [177]

A. They are copies of material that was in my file, and have been ever since the date of the letter.

Q. And exhibit 49 is a copy of a letter which you addressed on or about September 20, 1946 and sent to Mr. Carl White, Jr., president of Franks Manufacturing Corporation? A. Right.

Q. The original of which was signed by you?

A. Right.

Q. And did that letter include a sketch, exhibit 49-A?

A. Right. It is a comment on the sketch 49-A. Correction.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. The sketch 49-A accompanied the letter exhibit 49?

A. The sketch 49-A had been sent to me presumably by Mr. White for comment and the letter was written in comment of the sketch 49-A.

Q. Have you the correspondence from Mr. White with respect to your incorporating the sketch 49-A?

A. I do not. It was his custom to send letters to me with notations on the side, on which I made comments, and returned to him.

Q. Do you know whose handwriting the calculations on 49-A is, that is the 90'x 225,000 pounds, etc?

A. That appears to be my handwriting. It may be a notation of verbal information was given me. I may not have been given anything but the sketch and a verbal explanation of any information that accompanied it. [178]

Q. Is your statement a complete recollection of everything you now know about the documents exhibit 49 and 49-A? A. That's right.

Q. Have you seen, or do you know of your own personal knowledge, whether or not there is any additional correspondence with Mr. Hillman or Mr. Hillman's firm, relating to the Drive-In unit, manufactured by Waldrip Manufacturing Company or devised by Mr. Moon?

A. To my knowledge that is all that was ever referred to me. [179]

* * * * *

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. That work by Mr. Aulur, and such work as you did with Mr. Aulur, was done in California, was it not?

A. It was done in California. I had no direct contact with it. The only time that I had any knowledge of what was going on, there were two or three prints sent in here, on which I made comments to Mr. Carl White.

Q. Mr. Woody, I show you a folder, marked Waldrip Western—

Mr. Subkow: May it be stipulated, Mr. Crowley, that this is the exhibit 8, that is in the Moon deposition?

Mr. Crowley: Yes.

Mr. Subkow: And may we introduce it in this deposition by reference to the Moon deposition?

Mr. Crowley: You may.

Q. Have you ever seen this exhibit 8 before, Mr. Woody? A. Yes, sir, I have.

Q. Will you tell us the history of that, as to your knowledge of it?

A. This was evidently given to someone in the organization, and was eventually sent up, as I recall, from Mr. White's office for my file. I keep a competitive file. From time to time announcements, or sometimes advertisements, catalogs of [180] competitive equipment are kept in that file, as a matter of reference, if any question comes up as to what one person is doing, or one competitor is doing compared to what we are doing.

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)

Q. Do you know who the person was in your organization, first obtained this document?

A. No, I don't. The first knowledge that I had of it was when Mr. White brought it up and gave it to me.

Q. Can you fix the date when it was given to you?

A. Well, as I recall, this didn't come into my possession until near the end of production of this kind of equipment by Waldrip Western, it may have even been after, because at the time the equipment was being built, as I recall, I had no concrete information on it at all,—at least most of the time it was under construction, I had no concrete information on it at all.

Q. Did you have it before Mr. Aulur started his work?

A. That is doubtful. He may have, but as far as him having it,—having at least this copy, unless there was other material in California,—as far as him having this copy as a matter of reference, he didn't.

Q. With respect to your obtaining it from Mr. White, can you fix it as to whether or not you obtained it before or after you engaged Mr. Aulur to do the designs, to which you referred? [181]

A. To the best of my recollection it was after. Mr. Aulur was detached from regular engineering, oh for probably a year or more before he was sent to California, and during the time he was detached,

Plaintiffs' Exhibit No. 98—(Continued)
(Deposition of Wayland B. Woody.)
both here and in California, he had no access to our file—oh, he had access, but just on specific service problems. He was service engineer before he went to California and that was largely what he was supposed to engage in out there. The work he did on this was a side issue.

Q. Miss Gordon, would you read my question to Mr. Woody?

(The last question was read by the reporter.)

A. I can't state positively the date.

Q. What is your best recollection?

A. The best recollection is that that material came into my hands after the—

Mr. Crowley: Demise?

A. —practically so. At any rate it didn't do me any good as far as having information on current products.

Q. Mr. Woody, the question was whether or not, what your best recollection is as to when you received it. If you have no recollection whatever, why that is all right. [182]

* * * * *

A. If I may, I might amplify the statement. As I recall, production of the equipment illustrated in there, had been probably in the process for three years at the time that book came into my possession. I would say it was possibly 1950, it might have been '49. [183]

* * * * *

[Endorsed]: Filed July 23, 1957.

[Endorsed]: No. 16132. United States Court of Appeals for the Ninth Circuit. James Moon, Edmond M. Wagner and Philip Subkow, Appellants, vs. Cabot Shops, Inc., and Howard Supply Company, Appellees. Cabot Shops, Inc., and Howard Supply Company, Appellants, vs. James Moon, Edmond M. Wagner and Philip Subkow, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: August 6, 1958.

Docketed: August 9, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16132

JAMES MOON, EDMOND M. WAGNER, and
PHILIP SUBKOW, Appellants,

vs.

CABOT SHOPS, INC. et al., Appellees.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD ON BEHALF
OF DEFENDANTS, CABOT SHOPS, INC.
AND HOWARD SUPPLY CO., APPEL-
LEES-CROSS-APPELLANTS

Appellees-cross-appellants hereby adopt as their statement of points on appeal and their designation of record the statement of points relied upon by defendants-appellants appearing at page 117 et seq. of the typed record and the designation of record on appeal by defendants-cross-appellants appearing at page 115 et seq. of the typed record.

Dated this 8th day of August, 1958.

LYON & LYON,
/s/ By CHARLES G. LYON,
Attorneys for Appellees-
Cross-Appellants.

Acknowledgment of Service Attached.

[Endorsed]: Filed August 9, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD ON BEHALF
OF APPELLANTS - CROSS - APPELLEES,
JAMES MOON, EDMOND M. WAGNER
AND PHILIP SUBKOW

Appellants-cross-appellees hereby adopt as their statement of points on appeal and their designation of the record, the statement of points relied upon by plaintiffs-appellants appearing at age 112 et seq. of the typed record and the designation of the record on appeal by plaintiffs-appellants appearing at page 102 et seq. of the typed record.

Dated this 5th day of September, 1958.

/s/ PHILIP SUBKOW,

In Propria Persona and Attorney for Appellants-
Cross-Appellees.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 10, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION

It Is Stipulated by and between the parties that each of the following exhibits in evidence in this cause be included within the printed record, to wit:

Exhibits 1, 1A, 10, 11, 12, 19, 33, 34, 35, 44, 45, 59, 84, AB, 91, 97, those portions of the Woody Deposition Exhibit 98 specified in Plaintiffs' Designation Item 25, Exhibit 101 (Plaintiffs' Designation Item 11), Exhibit 102 (Plaintiffs' Designation Item 6), Exhibit 103 (Plaintiffs' Designation Item 10), Exhibit 104 (Plaintiffs' Designation Item 9), Exhibit 105 (Plaintiffs' Designation Item 8) and each patent in Exhibits S and T-1, other than the patent Exhibits 10, 11, 19, 44, 45. All other of the exhibits and portions of exhibits designated by plaintiffs-appellants or defendants-appellees shall be included in the record as physical exhibits in their original form without reproduction in the printed record.

Dated this 5th day of September, 1958.

LYON & LYON,
/s/ By CHARLES G. LYON,
Attorneys for Appellees-
Cross-Appellants.

/s/ PHILIP SUBKOW,
In Propria Persona and Attorney for Appellants-
Cross-Appellees.

[Endorsed]: Filed September 10, 1958. Paul P.
O'Brien, Clerk.